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No. 03-1454

IN THE

Supreme Court of the United States

JOHN ASHCROFT, ATTORNEY GENERAL, ET AL.,
Petitioners,

v.

ANGEL McCLARY RAICH, ET AL.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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QUESTION PRESENTED

Respondents are two seriously ill California patients and caregivers to one of the patients. Respondents possess or cultivate cannabis solely to be used by the patients for medical purposes, as recommended by the patients' physicians and authorized by the California Compassionate Use Act, Cal. Health & Safety Code § 11362.5. The medical cannabis is cultivated using only materials originating from or manufactured within the State of California. The question presented is:

Whether the court of appeals properly concluded that Respondents are entitled to a preliminary injunction preventing Petitioners from taking action to enforce the Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, against them based upon: (1) the likelihood that Respondents will succeed on the merits of their claim that the Controlled Substances Act, as applied to them, exceeds Congress's power under the Commerce Clause; (2) the likelihood that Respondents will succeed on the merits of their additional claims under the Due Process Clause of the Fifth Amendment, the Ninth and Tenth Amendments, and the medical necessity doctrine; and (3) the findings of both courts below that the balance of hardships and the public interest tip sharply in favor of Respondents, such that a preliminary injunction is warranted based upon the existence of a serious question going to the merits.

PARTIES TO THE PROCEEDING

Petitioners are John Ashcroft, Attorney General of the United States, and Karen P. Tandy, Administrator of the Drug Enforcement Administration.

Respondents are Angel McClary Raich, Diane Monson, John Doe Number One, and John Doe Number Two.

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Respondents agree with Petitioners that this case presents questions of great public importance. For several reasons, however, the Court should not grant immediate review. The court of appeals' decision is interlocutory, and this Court would benefit greatly from a full factual record. In addition, there are alternate grounds on which the entry of a preliminary injunction would be proper even if this Court were to disagree with the court of appeals' preliminary ruling on the Commerce Clause. Finally, Petitioners have failed to demonstrate that immediate review is imperative.

STATEMENT OF THE CASE

1. a. California is one of nine States that have enacted laws approving the use of cannabis for medical purposes. *See* Compassionate Use Act of 1996, Cal. Health & Safety Code § 11362.5 (West Supp. 2004).[1] The purpose of the

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[1] The other States are Alaska, Colorado, Hawaii, Maine, Nevada, Oregon, Vermont, and Washington. *See* Alaska Stat. §§ 11.71.090, 17.37.010 *et seq.* (Michie 2003); Colo. Const. Art. 18, § 4; Haw. Rev. Stat. Ann. § 329-121 *et seq.* (Michie Supp. 2003); Me. Rev. Stat. Ann. tit. 22, § 2383-B (West 2004); Nev. Rev. Stat. Ann. § 453A.200 (Michie Supp. 2003); Or. Rev. Stat. §§ 475.300-.346 (2003); Vt. Stat. Ann. tit. 18 § 4272 *et seq.* (2004); Wash. Rev. Code Ann. §§ 69.51.010-.080 (West 2004). Five other States have enacted laws that recognize the therapeutic benefits of cannabis but authorize use only by prescription, *see* Ariz. Rev. Stat. § 13-3412.01 (West 2004); La. Rev. Stat. Ann. § 40:1201 (West 2003); N.H. Rev. Stat. Ann. § 318-B:10(VI) (2003); Va. Code Ann. § 18.2-251.1 (Michie 2003), or that classify cannabis as having "currently accepted medical uses" without authorizing such uses, *see* Iowa Code §§ 124.205, 124.206(7)(a) (West 2003). Efforts to enact compassionate use laws are underway in at least nine other States, including Connecticut, Florida, Illinois, Missouri, Montana, New York, Rhode Island, Utah, and Wisconsin, and in the District of Columbia. *See also* Coleen McMurray, *Medicinal Marijuana: Is It What the Doctor Ordered?*, Gallup Poll Tuesday Briefing (Dec. 16, 2003) (75% of Americans support allowing physicians to prescribe cannabis to patients "to ease pain and suffering").

Compassionate Use Act is "[t]o ensure that seriously ill Californians have the right to obtain and use marijuana for medical purposes where the medical use is deemed appropriate and has been recommended by a physician who has determined that the person's health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief." *Id.* § 11362.5(b)(1)(A). The Act permits a patient, or the patient's primary caregiver, to possess or cultivate cannabis for the patient's personal medical purposes upon the recommendation or approval of a physician. *Id.* § 11362.5(d).

b. The federal Controlled Substances Act, 21 U.S.C. § 801 *et seq.*, ("CSA") makes it a crime to possess any controlled substance except as authorized by the CSA. 21 U.S.C. § 844(a). Although marijuana is classified as a schedule I drug with "no currently accepted medical use in treatment in the United States," *id.* § 812(b)(1)(B), (c),[2] "the public record reflect[s] a legitimate and growing division of informed opinion on this issue." *Conant v. Walters*, 309 F.3d 629, 640 (9th Cir. 2002) (Kozinski, J., concurring), *cert. denied*, 124 S. Ct. 387 (2003). "A surprising number of health care professionals and organizations have concluded that the use of marijuana may be appropriate for a small class of patients who do not respond well to, or do not tolerate, available prescription drugs." *Id.* at 640-41. For example, a

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[2] Federal law defines "marihuana" to mean "all parts of the plant Cannabis sativa L." except "the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, . . . or the sterilized seed of such plant." 21 U.S.C. § 802(16). In this brief, the term "cannabis" refers to any part of the plant Cannabis sativa L. used for medical purposes.

study commissioned by the White House Office of National Drug Control Policy and carried out by the National Institute of Medicine (a component of the National Academy of Sciences) concluded that "the accumulated data suggest a variety of indications, particularly for pain relief, antiemesis, and appetite stimulation," and that "[f]or patients such as those who suffer simultaneously from severe pain, nausea, and appetite loss, cannabinoid drugs might offer broad-spectrum relief not found in any other single medication." Institute of Medicine, *Marijuana and Medicine: Assessing the Science Base* 177 (Janet E. Joy *et al.* eds., 1999), *available at* http://www.nap.edu/books/0309071550/html. The study further concluded that "[u]ntil a nonsmoked rapid-onset cannabinoid drug delivery system becomes available," "there is no clear alternative for people suffering from *chronic* conditions that might be relieved by smoking marijuana, such as pain and AIDS wasting." *Id.* at 179 (emphasis in original). Accordingly, the study endorsed treatment of such patients with smoked marijuana subject to an oversight mechanism. *See id.* at 179. Other studies have reached similar conclusions. *See Conant*, 309 F.3d at 640-43 (Kozinski, J., concurring) (summarizing the scientific evidence supporting limited medical use of cannabis, and its acceptance by, among others, the British House of Lords and the Canadian government).[3]

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[3] Surprisingly, Petitioners fail to acknowledge the existence of this evidence, and also quote, without qualification, statements that "there have been no studies that have scientifically assessed the efficacy of marijuana for any medical condition" and "there are no FDA-approved marijuana products." Pet. 17 n.4 (quoting 66 *Fed. Reg.* 20,038 (Apr. 18, 2001)). As to the latter statement, Marinol is an FDA-approved product, and the active ingredient of Marinol is the cannabinoid THC, one of the primary psychoactive compounds in marijuana. *See Marijuana and Medicine* 137, 202-07.

2. Respondents are California citizens who cultivate or use cannabis for medical treatment on the recommendation of their physicians and pursuant to the Compassionate Use Act. Pet. App. 46a. Respondents Angel Raich and Diane Monson each suffer from serious medical conditions. Both courts below found that "[t]raditional medicine has utterly failed these women." *Id.* at 5a, 46a. Respondents John Doe Number One and John Doe Number Two are Raich's caregivers.

a. Respondent Angel Raich suffers from a daunting array of serious medical conditions including "life-threatening weight loss, nausea, severe chronic pain (from scoliosis, temporomandibular joint disfunction and bruxism, endometriosis, headache, rotator cuff syndrome, uterine fibroid tumor causing severe dysmenorrheal, chronic pain combined with an episode of paralysis that confined her to a wheelchair), post-traumatic stress disorder, non-epileptic seizures, fibromyalgia, inoperable brain tumor (probable meningioma or Schwannoma), paralysis on at least one occasion (the diagnosis of multiple sclerosis has been considered), multiple chemical sensitivities, allergies, and asthma." App., *infra*, 2a (Decl. of Frank Henry Lucido, M.D.)[4]

Raich's physician, a Board-certified family practitioner, states that his patient "has tried essentially all other legal alternatives to cannabis and the alternatives have been ineffective or result in intolerable side effects." App., *infra*, 3a. Raich's physician has submitted a list of 35 medications that Raich has tried, all of which "resulted in unacceptable adverse side effects." *Id.* The physician has concluded that "Angel has no reasonable legal alternative to cannabis for

[4] The declarations of Angel Raich, Diane Monson and their physicians are attached as an appendix to this brief.

effective treatment or alleviation of her medical conditions or symptoms." *Id.*

From 1996 to 1999, Raich was partially paralyzed and confined to a wheelchair. App., *infra*, 14a, 24a, 26a-27a (Decl. of Angel Raich). In August 1997, after her physician concluded that her pain could not be controlled using conventional medications, Raich attempted suicide to end her pain and suffering. *Id.* at 26a; Pet App. 93a.

Thereafter, Raich began using cannabis on her physician's recommendation, and her medical condition improved significantly. She is no longer confined to a wheelchair. App., *infra*, 24a-25a. She is better able to cope with her medical conditions and plays a more active role in the lives of her two children. *Id.* at 15a-16a, 41a.

Raich's physician has concluded that his patient may die if she is denied medical cannabis. App., *infra*, 4a-5a ("It could very well be fatal for Angel to forego cannabis treatments."). The physician also states: "It is my opinion that Angel cannot be without cannabis as medicine because of the precipitous medical deterioration that would quickly develop." *Id.* at 2a. "She clearly loses weight, and would risk wasting syndrome and death, without cannabis." *Id.* In addition, "Angel becomes debilitated from severe chronic pain. *Id.*[5]

[5] The Petition refers to Respondents' "purported personal 'medicinal' use" of marijuana. Pet. i. By placing "medicinal" in quotation marks and referring to "purported" medicinal use, Petitioners imply that Respondents may not be using cannabis for medical purposes. This implication is unwarranted. Respondents have submitted evidence that they are using cannabis for bona fide medical purposes, and Petitioners have not disputed that evidence. At this stage of the proceedings, Petitioners must accept the record as it stands.

b. Respondent Diane Monson suffers from severe, chronic back pain and constant painful muscle spasms caused by a degenerative disease of the spine. Pet. App. 5a. Monson's physician, who is also Board-certified in family practice, states that "Diane has tried other medical alternatives to medical cannabis, including Flexeril, a muscle relaxant, and Feldene, a powerful anti-inflammatory," but "those prescription drugs have proven to be either ineffective in relieving Diane's pain and suffering or produce intolerable side effects." App., *infra*, 7a (Decl. of John Rose, M.D.). Dr. Rose reports that he "prescribed Vicodin and Vioxx to attempt to relieve Diane's pain and suffering," but "Vicodin, an addictive drug," "leaves her with an extremely sick stomach for several days after any use." *Id.* Vioxx "appears to relieve Diane's inflammation associated with her back pain" but "does not relieve her painful spasms." *Id.* Dr. Rose has determined "that medical cannabis use is deemed appropriate for Diane Monson, and that medical cannabis provides necessary relief for Diane's pain and suffering." *Id.* Accordingly, "pursuant to California state law, medical cannabis was recommended for Diane as treatment of her medical conditions, including her Chronic Back Pain and Spasms." *Id.* Cannabis "virtually eliminates" Diane's muscle spasms and "greatly relieves" her back pain. *Id.* at 11a (Decl. of Diane Monson). Without cannabis, Diane would suffer "intense pain" that would make working or even sitting down "impossible," and would relegate her to lying down. *Id.* at 10a-11a.[6]

c. Angel Raich's cannabis is grown using only soil, water, nutrients, growing equipment, supplies, and lumber originating from or manufactured within California. Pet.

[6] The record refutes Petitioners' suggestion that medical cannabis may induce patients "to refrain from consuming lawful drugs." Pet. 13 n.3. There is no alternative to cannabis for Respondents.

App. 47a. Diane Monson's "cultivation of marijuana is similarly local in nature." *Id.* Diane Monson cultivates her own cannabis. *Id.* at 46a. Angel Raich is unable to cultivate cannabis. *Id.*; App., *infra*, 30a-31a (Raich Decl.). She therefore relies on two caregivers, Respondents John Doe Number One and John Doe Number Two, to cultivate her cannabis for her. Pet. App. 5a, 46a; App., *infra*, 36a (Raich Decl.). Raich processes some of the plants into cannabis oils, balm, and foods. Pet. App. 5a. Raich's caregivers grow cannabis specifically for Raich, pursuant to her instructions and on her physician's written recommendation. App., *infra*, 36a-38a (Raich Decl.). The caregivers cultivate Raich's cannabis for her completely free of charge. *Id.* at 37a.[7]

On August 15, 2002, deputies from the Butte County Sheriff's Department and agents from the Drug Enforcement Administration ("DEA") came to Monson's home, where they found six cannabis plants. Pet. App. 6a. The deputies concluded that Monson's use of cannabis was legal under the Compassionate Use Act. *Id.* Following a "three-hour standoff" involving the Butte County District Attorney and the U.S. Attorney for the Eastern District of California, the

[7] Petitioners incorrectly describe the activities at issue in this case as including the "distribution without charge of marijuana." Pet. 8. The CSA defines "distribute" to mean "to deliver (other than by administering or dispensing)," and defines "deliver," in turn, as "the actual, constructive, or attempted transfer of a controlled substance." 21 U.S.C. § 802(8), (11). Diane Monson cultivates cannabis for her own use; there clearly is no "distribution" in her case. It is also a significant stretch to view the cultivation of cannabis by Angel Raich's caregivers as "distribution." Cultivating a neighbor's vegetable garden is not the same as distributing the vegetables. The court of appeals' narrower description of the activities at issue in this case is more accurate: "the intrastate cultivation, possession and use of medical marijuana on the recommendation of a physician." Pet. App. 11a.

DEA agents seized and destroyed Monson's cannabis plants. *Id.*

2. Respondents brought this action contending that it is unlawful to apply the CSA to prevent them from possessing and cultivating cannabis for personal medical purposes, as recommended by their physicians and permitted by State law. Respondents contend that applying the CSA to their activities would violate the Commerce Clause, the Due Process Clause of the Fifth Amendment, the Ninth Amendment, the Tenth Amendment, and the doctrine of medical necessity. Respondents filed a motion for a preliminary injunction, which the district court denied. Pet. App. 45a. The district court found that the balance of hardships and the public interest tip sharply in favor of granting injunctive relief. *Id.* at 67a-68a (the interests asserted by the federal government "wane in comparison with the public interests enumerated by plaintiffs and by the harm that they would suffer if denied medical marijuana" and Respondents have submitted "strong evidence that [they] will suffer severe harm and hardship if denied use of [cannabis]").

The district court nevertheless denied the motion for a preliminary injunction, on the ground that Respondents are "unable, on this record, to establish the required 'irreducible minimum' of a likelihood of success on the merits." Pet. App. 68a. On the Commerce Clause claim, the district court regarded itself as "bound by existing Ninth Circuit authority" upholding the CSA in non-medical contexts. *Id.* at 57a. The district court also held that Respondents are unlikely to prevail on their other claims. *Id.* at 58a-65a.

3. The court of appeals reversed. It agreed with the district court that "[t]here can be no doubt on the record as to the significant hardship that will be imposed on the patient-appellants if they are denied a preliminary injunction." Pet. App. 24a. Indeed, Petitioners "do not dispute this." *Id.* The court found that "[t]he public interest of the state of

California and its voters in the viability of the Compassionate Use Act also weighs against the [Petitioners'] concerns." *Id.* at 25a.

The court of appeals determined that Respondents are likely to prevail on the merits of their claim that the CSA, as applied to them, exceeds Congress's power under the Commerce Clause. Pet. App. 23a. The court of appeals noted that "the way in which the activity or class of activities is defined is critical." *Id.* at 11a. The court determined that "the intrastate, noncommercial cultivation, possession and use of marijuana for personal medical purposes on the advice of a physician" is a class of activities separate and distinct from drug trafficking. *Id.* The court observed that "concern regarding users' health and safety is significantly different in the medical marijuana context, where the use is pursuant to a physician's recommendation"; "limited medical use of marijuana as recommended by a physician arguably does not raise the same policy concerns regarding the spread of drug abuse"; and "this limited use is clearly distinct from the broader illicit drug market – as well as any broader commercial market for medical marijuana – insofar as the medicinal marijuana at issue in this case is not intended for, nor does it enter, the stream of commerce." *Id.*

Applying the four-factor analysis set out in *United States v. Morrison*, 529 U.S. 598 (2000), the court held that the cultivation, possession and use of cannabis for medicinal purposes is not properly characterized as commercial or economic activity because it does not involve an "'exchange of goods and services, esp. on a large scale involving transportation between cities, states, and nations.'" Pet. App. 14a (quoting *Black's Legal Dictionary* (7th ed. 1999) (defining "commerce")). The court concluded that it is not appropriate to apply the "aggregation principle" of *Wickard v. Filburn*, 317 U.S. 111 (1942), to activity that is non-commercial in character. Pet. App. 15a.

Second, the court of appeals noted, the CSA lacks a "jurisdictional hook" that would limit its application to "cases that substantially affect interstate commerce." Pet. App. 18a. Third, although the CSA includes general findings concerning the effects of intrastate activity on interstate commerce, those findings "are not specific to marijuana, much less intrastate medicinal use of marijuana that is not bought or sold and the use of which is based on the recommendation of a physician." *Id.* at 19a.

Finally, "the link between the regulated activity and a substantial effect on interstate commerce is 'attenuated.'" Pet. App. 21a. Even if the intrastate cultivation, possession, and use of medical cannabis on the recommendation of a physician could affect interstate commerce "at the margins" by *reducing* demand for marijuana that is trafficked interstate, "[i]t is far from clear that such an effect would be substantial." *Id.* at 21a-22a.

The court of appeals held that the likelihood the Respondents will prevail on the merits of their Commerce Clause claim, in conjunction with "public interest considerations and the burden faced by [Respondents] if, contrary to California law, they are denied access to medicinal marijuana, warrants the entry of a preliminary injunction." *Id.* at 26a. The court determined that its ruling is "sufficiently narrow to avoid" concerns that other plaintiffs seeking to use schedule I controlled substances will bypass the procedures established by Congress. The court found that Petitioners' "speculative slippery slope concern is weak in comparison to the real medical emergency facing the patient-appellants in this case." *Id.*

Judge Beam dissented. Pet. App. 26a-43a. He questioned whether Respondents' claims are ripe and whether they have standing to pursue this action. Because these issues were "not briefed or argued by the parties, or mentioned by the district court," Judge Beam would have

remanded to allow the district court to consider whether there is an Article III case or controversy. *Id.* at 30a. On the merits, Judge Beam concluded that "[i]t is simply impossible to distinguish" this case from *Wickard*. *Id.* at 26a.

REASONS WHY THE PETITION SHOULD BE DENIED

1. Respondents agree with Petitioners that this case presents questions of great importance. For several reasons, however, the Court should not grant review at this stage of the proceedings.[8]

First, the order of the court of appeals is interlocutory. The court of appeals' preliminary ruling is based on a limited factual record. Further proceedings in the district court will produce a more complete record and findings of fact. *See Sabri v. United States*, 124 S. Ct. 1941, 1948 (2004) (warning against deciding cases based on "factually barebones records"). A complete factual record is likely to shed light on a range of issues in this case, including whether the activities of similarly-situated individuals substantially affect interstate commerce. After the district court enters a final judgment based on a complete factual record, the Commerce Clause issue will be reconsidered by the court of

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[8] The Petition does not address Judge Beam's recommendation that the case be remanded to the district court to address factual issues related to ripeness and standing. *See* Pet. App. 26a-31a. Respondents believe that they have standing and that their claims are ripe, and Petitioners' silence on these issues indicates that they agree. The Court nevertheless has an obligation to consider Article III standing in every case, regardless of the views of the parties. Additional facts relevant to Article III requirements may be developed on remand.

appeals, and may be considered by that court en banc or by this Court.[9]

Second, if this Court granted immediate review, it might have no effect on the outcome of Respondents' motion for a preliminary injunction. Under the standard applied in the Ninth Circuit, where the balance of hardships and the public interest tip sharply in favor of the moving party, the court will grant a preliminary injunction if the movant can show the existence of "serious questions going to the merits." *Id.* (citing *First Brands Corp. v. Fred Meyer, Inc.*, 809 F.2d 1378, 1381 (9th Cir. 1987)). Both courts below found that the hardship and public interest factors tip sharply in Respondents' favor. *See* Pet. App. 24a, 68a. Petitioners do not challenge these findings. Thus, in order to obtain a preliminary injunction, Respondents are not required to show that they will prevail on the merits, or even that they are likely to prevail on the merits. Respondents must show only that there are serious questions going to the merits.

Respondents could satisfy this relatively undemanding standard even if the Court were to grant immediate review and agree with some or all of Petitioners' legal arguments. For example, the Court could conclude that the Commerce Clause issues ultimately turn on factual questions, such as whether seriously ill patients who take locally grown cannabis for medical purposes, considered in the aggregate, have a substantial effect on interstate commerce. In that event, the preliminary injunction might well remain in effect pending further factual development and entry of a final judgment. Moreover, Respondents have asserted several

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[9] The interlocutory nature of the court of appeals' decision, and the importance of a fully-developed record, may explain why not a single judge of the court of appeals requested a vote on whether to rehear the matter en banc at this stage. *See* Pet. App. 70a.

additional grounds for injunctive relief. If even one of these claims raises "serious questions going to the merits," the preliminary injunction would remain in effect even if this Court were to grant interlocutory review and issue a definitive ruling in Petitioners' favor on the Commerce Clause claim.

Third, the court of appeals' decision does not conflict with any decision of another court of appeals. None of the decisions of courts of appeals upholding the CSA against a Commerce Clause challenge, including prior decisions of the Ninth Circuit, "involved the use, possession, or cultivation of marijuana for medical purposes." Pet. App. 10a. Petitioners contend that, for Commerce Clause purposes, medical use should not be distinguished from non-medical use. But that is precisely the question addressed by the court of appeals' preliminary decision. To date, no other court of appeals has even considered that question, let alone disagreed with the Ninth Circuit. Accordingly, Petitioners are incorrect in asserting that the court of appeals' decision creates a conflict in the circuits.[10]

2. This Court has "emphasized" that "Congress' regulatory authority" under the Commerce Clause "is not without effective bounds," *Morrison*, 529 U.S. at 608, and "'may not be extended . . . [to] effectually obliterate the distinction between what is national and what is local and create a completely centralized government.'" *United States v. Lopez*, 514 U.S. 549, 556-57 (1995) (quoting *NLRB v.*

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[10] Petitioners are also incorrect in asserting (Pet. 18) that the court of appeals' decision conflicts with this Court's decision in *United States v. Oakland Cannabis Buyers' Cooperative* ("*OCBC*"), 532 U.S. 483 (2001). In *OCBC*, the Court expressly stated that it was not "passing today on a constitutional question, such as whether the Controlled Substances Act exceeds Congress' power under the Commerce Clause." *Id.* at 494 n.7.

Jones & Laughlin Steel Co., 301 U.S. 1, 37 (1937)). In this case, as in *Morrison* and *Lopez*, Petitioners make no attempt to defend the federal statute based on "use of the channels of interstate commerce," "the instrumentalities of interstate commerce, or persons or things in interstate commerce." *Morrison*, 529 U.S. at 609 (internal quotation marks and citations omitted). Accordingly, if application of the CSA to Respondents can be justified, it is only on the ground that Respondents' activities "substantially affect interstate commerce." *Id.* On the present record, Petitioners cannot make such a showing.

a. Petitioners quote Judge Beam's statement that "[i]t is simply impossible to distinguish the relevant conduct" in this case "from the cultivation and use of the wheat crop that affected interstate commerce in *Wickard*." Pet. 7-8 (quoting Pet. App. 26a). In fact, this case is distinguishable from *Wickard* on several grounds. Indeed, a decision upholding Congress's exercise of the Commerce Power in this case would represent a significant extension of *Wickard*.

First, *Wickard*, unlike this case, involved a commercial operation – a farm. The farm's "wheat acreage allotment" for 1941 under the Agricultural Adjustment Act was 11.1 acres, which at a "normal yield" for 1941 of "20.1 bushels of wheat an acre," yielded 221 bushels (or 13,260 pounds) of wheat.[11] 317 U.S. at 114. The farm actually planted 23 acres of wheat – more than double its allotment. *Id.* The 11.9 excess acres produced 239 bushels of wheat, bringing the farm's total wheat production to 460 bushels, or 27,600 pounds. *Id.* The excess wheat alone was far more than the

[11] 317 U.S. at 114. One bushel of wheat weighs approximately 60 pounds and yields approximately 60 pounds of whole-wheat flour or 42 pounds of white flour. Wheat Foods Council, *Grains of Truth About Wheat*, http://www.wheatfoods.org/docs/Grains_Truth_Wheat_Facts.doc (last visited June 5, 2004).

farmer and his family could consume. Some of the excess wheat was sold as a commodity. A portion of the excess wheat was fed to livestock and the livestock – or the milk and eggs they produced – were sold as commodities. *Id.*

Respondents, unlike the farm in *Wickard*, are not engaged in farming or any other commercial enterprise. They do not sell, barter, or exchange cannabis, or use it to produce any other product that they sell, barter, or exchange. Diane Monson cultivates only enough cannabis for her own medical use, while Angel Raich's caregivers cultivate her cannabis specifically for her, without any charge, for compassionate rather than economic reasons. The quantities involved are small compared to those in *Wickard*. *See* Pet. App. 6a (federal agents seized six cannabis plants).

Second, unlike the law at issue here, the federal law in *Wickard* exempted small commercial farms, and certainly exempted wheat grown in home gardens for personal use. *See* 317 U.S. at 130 & n.30 (citation omitted). At the time the wheat at issue in *Wickard* was planted, "small producers" were defined as those that produced "less than 200 bushels" (12,000 pounds) of wheat. *Id.* By the time the wheat was harvested, the definition had been amended to exempt up to 15 acres of wheat, enough to produce 300 bushels (18,000 pounds) of wheat. *See* 54 Stat. 232. In this case, there is no such exemption.

Third, the evidence in *Wickard* demonstrated that the commercial activity of the farmer and others similarly situated had a substantial aggregate effect on interstate commerce. As the government's brief in *Wickard* explained, in the years immediately before Congress enacted the Agricultural Adjustment Act, nearly 30 percent of the nation's wheat was used on the farm where it was grown. *See* Br. of Appellants in No. 59, *Wickard v. Filburn*, at 12 (from "1931-32 to 1935-36," the "average production of wheat in the United States was 680,603,000 bushels,"

"484,673,000 bushels" of which were "sold from the farm"; the remaining 195,930,000 bushels (28.8%) were fed to livestock, used as seed, or used in the household on "the farm where grown").[12] The Court's opinion in *Wickard* left no doubt that the aggregate effect of this activity on interstate commerce was a critical factor in the Court's decision. *See* 317 U.S. at 128 ("It can hardly be denied that *a factor of such volume and variability* as home-consumed wheat would have a substantial influence on price and market conditions.") (emphasis added), *quoted in Lopez*, 514 U.S. at 560.

In this case, in contrast, it is "far from clear" that seriously ill individuals who cultivate small amounts of cannabis for their own medical use, on a doctor's recommendation and pursuant to State law, have any substantial aggregate effect on interstate commerce. Pet. App. 22a. Cannabis patients make up a negligible percentage of marijuana users. *See* United States General Accounting Office, *Marijuana: Early Experiences with Four States' Laws That Allow Use for Medical Purposes* 21 (Nov. 2002), *available at* http://www.gao.gov/new.items/d03189.pdf ("Relatively few people are registered as medical marijuana users in Alaska, Hawaii and Oregon. In these States, registry data showed that the number of participants registered was 0.05 percent or less of the total population of each respective state.").[13] The GAO's report does not include statewide data

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[12] By the time the Court decided *Wickard*, the percentage had dropped, but it still represented more than one-fifth of the volume of wheat produced nationwide. Br. of Appellants on Reargument in No. 59, *Wickard v. Filburn*, at 3 (22 percent of the wheat grown in 1940 was not sold).

[13] Only 364 of the more than 4,300,000 people who live in Colorado – 0.0008% – have a valid medical marijuana identification card. Colorado Dep't of Public Health and Environment, *Medical Marijuana Registry Program Update* (Apr. 30, 2004), *available at* http://www.cdphe.state.co.us/hs/Medicalmarijuana/marijuanaupdate.asp; (continued...)

for California, but it does include data for four California counties. In each of these counties, cannabis patients represent less than one-half of one percent of the population.[14]

This case is thus quite different from *Wickard*, where the regulated enterprise and similarly-situated enterprises represented over one-fourth of the nationwide wheat market, so that applying the federal law to the farm at issue and all similarly situated farms was "an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated." *Lopez*, 514 U.S. at 561.[15]

U.S. Census Bureau, *Colorado: 2000* (Aug. 2002), *available at* http://www.census.gov/prod/2002pubs/c2kprof00-co.pdf. Only 8,975 of the more than 3.5 million residents of Oregon – less than 0.03 percent – hold a state-issued card allowing them to grow and possess marijuana for personal medical use. Oregon Dep't of Human Services, *Oregon Medical Marijuana Program: Statistics* (Apr. 1, 2004), http://www.dhs.state.or.us/publichealth/mm/data.cfm.

[14] This is so even though one of the four jurisdictions is San Francisco County, an urban county with an especially high number of AIDS patients. As of January 31, 2003, of the 61,013 California residents with AIDS, 8,131 – over 13% – lived in San Francisco. *See* California Prevention Services, Office of AIDS, *AIDS Case Archives*, http://www.dhs.ca.gov/aids/Statistics/default.htm (last visited June 5, 2004).

[15] There are other differences between this case and *Wickard*. In *Wickard*, applying the Agricultural Adjustment Act to the farm and similarly situated farms furthered the federal government's objective of increasing the price of wheat. In this case, in contrast, applying the CSA to Respondents and other similarly situated patients will not further the government's objective of eliminating interstate commerce in marijuana – indeed, it may have the opposite effect if patients are driven to purchasing cannabis rather than cultivating it themselves. Furthermore, the farmer in *Wickard benefited* from the marketing quotas, which increased the price of his wheat. In a referendum of wheat growers, 81 percent *voted* in favor of the marketing quotas. 317 U.S. at 116. The farmer in *Wickard* (continued...)

This Court has observed that *Wickard* is "perhaps the most far reaching example of Commerce Clause authority over intrastate activity." *Lopez*, 514 U.S. at 561. At some point, the Court might well conclude that it is appropriate to narrow the holding of *Wickard*. In this case, however, the issue is whether *Wickard* should be substantially *expanded*.

b. In *Morrison* the Court identified four "reference points" that guide analysis of whether an activity "substantially affects" interstate commerce: (1) whether the federal law at issue is "a criminal statute that by its terms has nothing to do with 'commerce' or any sort of economic enterprise"; (2) whether the federal statute lacks an "express jurisdictional element which might limit its reach to a discrete set of . . . possessions that additionally have an explicit connection with or effect on interstate commerce"; (3) whether there are no "express congressional findings regarding the effects upon interstate commerce" of the activity in question; and (4) whether "the link between [the activity] and a substantial effect on interstate commerce [i]s attenuated." 529 U.S. at 610-12. The differences between this case and *Wickard* support the conclusion that Respondents' activity does not substantially affect interstate commerce.

First, this Court observed in *Morrison* that "in every case where we have sustained federal regulation under the aggregation principle in *Wickard*, the regulated activity was of an apparent commercial character" and involved "some sort of economic endeavor." 529 U.S. at 611 & n.4 (internal citation omitted). In this case, unlike *Wickard*, Respondents

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faced only a $117.17 fine. *Id.* at 115. Here, in contrast, both courts below found that Respondents will be severely *harmed* by application of the CSA; the citizens of California *voted* to permit limited medical use of cannabis; and Respondents face not a modest fine but imprisonment, large forfeitures, fines, excruciating pain, and possibly death.

are not engaged in an activity of a "commercial character" or in an "economic endeavor." They do not sell, barter, or exchange cannabis, or use it as an input for any other product that they sell, barter, or exchange. Diane Monson cultivates only enough cannabis to meet her own medical needs, on her doctor's recommendation, to "make the difference between a relatively normal life and a life marred by suffering." *Conant v. Walters*, 309 F.3d at 643 (Kozinski, J., concurring). Angel Raich does the same, relying on caregivers to cultivate her cannabis because she is too ill to do so on her own. Raich's caregivers cultivate her cannabis as an act of compassion. They do not receive payment or any item of economic value for their efforts. This activity, undertaken to avoid excruciating pain and prolong life, is "activity beyond the realm of commerce in the ordinary and usual sense of that term." *Lopez*, 514 U.S. at 583 (Kennedy, J., joined by O'Connor, J., concurring).

Second, the CSA lacks any "express jurisdictional element" that could "ensure, through case-by-case inquiry, that the [activity] in question affects interstate commerce." *Id.* at 561-62.

Third, the CSA contains no specific findings concerning cannabis, let alone findings directed to local cultivation and use of cannabis solely for treatment of seriously ill patients, as recommended by a doctor and regulated by State law. To be sure, the CSA contains general findings that any possession or use of any controlled substance, except as authorized by federal law, substantially affects interstate commerce. *See* 21 U.S.C. § 801. But "the existence of congressional findings is not sufficient, by itself, to sustain the constitutionality of Commerce Clause legislation." *Morrison*, 529 U.S. at 614. "Whether particular operations affect interstate commerce sufficiently to come under the constitutional power of Congress to regulate them is ultimately a judicial rather than a legislative question." *Id.* Congress's generalized and conclusory findings cannot

decide the judicial question presented by this case: whether cultivation, possession, and use of small quantities of cannabis, by seriously ill patients as medication, on a doctor's recommendation and as permitted by State law, substantially affects interstate commerce. The record at this point strongly supports the conclusion that locally cultivated medical cannabis is *not* transported in interstate commerce, does *not* swell interstate trafficking in marijuana, and may well be distinguishable from marijuana that is transported in interstate commerce based upon the system of regulation established by California law. The evidence produced so far therefore indicates that federal control of medical cannabis cultivated pursuant to California's Compassionate Use Act is not "an essential part of a larger regulation of economic activity, in which the regulatory scheme could be undercut unless the intrastate activity were regulated." *Lopez*, 514 U.S. at 561.

Fourth, the link between Respondents' activity and interstate commerce is attenuated at best. Respondents function outside any commercial market. They cultivate small amounts of cannabis for personal medical use; they do not sell, barter, or exchange cannabis, in interstate commerce or otherwise. The only individuals involved, other than the two patients, are Raich's caregivers, and they receive no payment or anything of tangible value in return for cultivating Raich's cannabis specifically for her. Pet. App. 14a n.3 ("'My caregivers grow my medicine specifically for me. They do not charge me, nor do we trade anything.'") (quoting App., *infra*, 37a (Raich Decl.)).

c. Petitioners do not argue that Respondents' activities, considered by themselves, substantially affect interstate commerce. Nor do they seriously contend, given the present record, that the activities of similarly-situated patients considered in the aggregate substantially affect interstate commerce. Petitioners therefore are relegated to an argument that Respondents' activities "are part of the overall class of

activities regulated by Congress" under the CSA – *i.e.*, the manufacture, possession, and distribution of controlled substances – and this broader class of activities involves economic activity and substantially affects commerce. Pet. 12.

If Petitioners' argument were accepted, there would be no limit on the reach of the Commerce Clause power. That is so because "one always can draw the circle broadly enough to cover an activity that, when taken in isolation, would not have substantial effects on commerce." *Lopez*, 514 U.S. at 560 (Thomas, J., concurring). *See also Morrison*, 529 U.S. at 657 (Breyer, J., dissenting) (noting that if Commerce Clause analysis depends on the class of activities addressed by the federal statute, Congress could shield the Violence Against Women Act from Commerce Clause scrutiny by incorporating it "in a broader 'Safe Transport' or 'Workplace Safety' act"). In *Lopez* and *Morrison*, this Court rejected reasoning under which "Commerce Clause authority would effectively know no limit." *Sabri*, 124 S. Ct. at 1947. Consequently, Petitioners' argument must be rejected.

If Petitioners were correct, there would be no such thing as an as-applied challenge under the Commerce Clause. In fact, however, this Court "has always entertained" such challenges. *United States v. Stewart*, 348 F.2d 1132, 1141 (9th Cir. 2003). *Wickard* itself was an as-applied challenge. "Had the Court deemed regulation of the business of agriculture a sufficient basis for upholding the application of the Agricultural Adjustment Act to Filburn, there would have been no need for it to analyze how *his* particular activities affected interstate commerce." *Id.* Similarly, in considering whether Title II of the Civil Rights Act exceeded Congress's powers under the Commerce Clause, the Court separately considered whether the statute was valid "as applied . . . to a motel which concededly serves interstate travelers," *Heart of Atlanta Motel v. United States*, 379 U.S. 241, 261 (1964), and "as applied to a restaurant annually receiving about

$70,000 worth of food which has moved in commerce." *Katzenbach v. McClung*, 379 U.S. 294, 298 (1964). If the Court had considered only the entire class of activities covered by Title II, it would have decided only one case, not two, and it would not have considered "whether *a single hotel or restaurant* had a sufficient nexus to interstate commerce, and thus could be federally regulated." *Stewart*, 348 F.3d at 1141-42. *See also Solid Waste Agency v. U.S. Army Corps of Engineers*, 531 U.S. 159, 173 (2001) (noting that to address the Commerce Clause issue the Court "would have to evaluate the precise object or activity that, in the aggregate, substantially affects interstate commerce").

Accordingly, Petitioners cannot prevail in this case by invoking the principle that "[w]here a general regulatory statute bears a substantial relation to commerce, the *de minimis* character of individual instances arising under that statute is of no consequence." *Lopez*, 514 U.S. at 558 (internal quotation and citation omitted). As *Wickard* itself demonstrates, even where the regulated activity is of an apparent commercial character, the aggregation principle extends only to the activities of other "similarly situated" individuals. 317 U.S. at 128.

Here, Respondents' activity falls within a traditional area of State regulation, is defined and delimited by State law, and is distinguishable from non-medical use of marijuana on multiple grounds (including that the use is pursuant to a physician's recommendation and does not involve any purchase, sale, or distribution). Accordingly, even if Respondents' activities could be considered together with those of other similarly-situated patients who use locally cultivated cannabis for medical reasons, *Wickard*'s aggregation principle does not justify lumping Respondents together with all individuals who possess, manufacture, or distribute any controlled substance in any circumstances.

d. In *Lopez* and *Morrison*, this Court recognized that an overbroad interpretation of the Commerce Clause undermines the principle of State sovereignty protected by the Tenth Amendment. *See Lopez*, 514 U.S. at 564 (rejecting federal government's Commerce Clause theories because they would extend federal power to "areas where States have historically been sovereign"); *id.* at 567 (Kennedy, J., concurring) ("Were the Federal Government to take over the regulation of entire areas of traditional state concern, areas having nothing to do with the regulation of commercial activities, the boundaries between the spheres of federal and state authority would blur and political responsibility would become illusory."); *Morrison*, 529 U.S. at 618 (noting that the Violence Against Women Act involved "the police power, which the Founders denied the National Government and reposed in the States").

Under the Tenth Amendment, the States retain "broad police powers" to regulate "the administration of drugs by the health professions." *Whalen v. Roe*, 429 U.S. 589, 603 n.30 (1977). Indeed, "direct control of medical practice in the states is beyond the power of the federal government." *Linder v. United States*, 268 U.S. 5, 18 (1925). California has exercised its police powers by enacting the Compassionate Use Act, and other States are following a similar path. *See New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (Brandeis, J., dissenting) ("It is one of the happy incidents of the federal system that a single courageous state may, if its citizens choose, serve as a laboratory; and try novel social experiments without risk to the rest of the country."). Because application of the CSA to Respondents would interfere with the State's exercise of its broad police powers, the entry of a preliminary injunction is also supported by principles of State sovereignty protected by the Tenth Amendment.

e. Petitioners assert that the preliminary injunction "seriously undermines Congress's comprehensive scheme for

the regulation of dangerous drugs" and "threatens a substantial increase in the level of prohibited drug activity." Pet. 9-10, 21. In the courts below, Petitioners had an opportunity to make a factual showing that a preliminary injunction would cause irreparable harm. Petitioners submitted *no* affidavits, declarations, or other evidence in opposition to the motion for a preliminary injunction. Both courts below found that the balance of hardships tips sharply in favor of Respondents. This Court accords a very high degree of deference to such factual determinations, especially when the party challenging the findings offered no evidence to the contrary. *See Exxon Co., U.S.A. v. Sofec, Inc.*, 517 U.S. 830, 841 (1996).

Contrary to Petitioners' assertion (Pet. 15), the court of appeals' preliminary injunction does not authorize Respondents to "function essentially as unregulated and unsupervised drug manufacturers and pharmacies," because California regulates access to cannabis for medical use. Under California law, Respondents are authorized to possess and cultivate only small amounts of cannabis, solely for the patients' medical use, and solely upon the recommendations of their physicians.

Similarly, Petitioners have made no factual showing that the preliminary injunction "threatens a substantial increase in the level of prohibited drug activity." Pet. 21. The States must be trusted to enforce their laws, and they appear to be doing exactly that.[16] In addition, California recently enacted

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[16] *See, e.g.*, Office of the Attorney General, State of California, *Attorney General Lockyer Issues Statement on Federal Threat to Cut State's Share of Anti-Drug Funds* (May 21, 2003), http://caag.state.ca.us/newsalerts/2003/03-062.htm ("Our CAMP program has continued to break records every year in the amount of marijuana seized. Since 1999, we have seized more than 1.25 million illegal marijuana plants worth more than $4 billion."); *State of Washington v. Shepherd*, 41 P.3d 1235, 1238-39 (continued...)

legislation directing the California Attorney General to "develop and adopt appropriate guidelines to ensure the security and nondiversion of marijuana grown for medical use by patients qualified under the Compassionate Use Act of 1996." Cal. Health & Safety Code § 11362.81 (West Supp. 2004).

Ultimately, Petitioners are reduced to arguing that the federal government is being irreparably harmed because the court of appeals has asked the parties to submit briefs in two other pending appeals, one involving cannabis "clubs" and another involving a cannabis "collective," addressing the effect of the ruling in this case, and because the decision in this case has been cited by the parties in three pending district court cases. Pet. at 23-24 & n.6. The short answer to this argument is that such routine litigation developments in other cases presenting different facts do not rise to the level of a "significant adverse impact" (Pet. 22) on the government in *this* case, sufficient to tip the balance of hardships in Petitioners' favor.[17]

3. Respondents may defend the decision of the lower court "on any ground properly raised below whether or not

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(Wash. Ct. App. 2002) (affirming conviction for felony marijuana possession because defendant, who claimed he was "designated primary caregiver" for patient, did not comply with Washington Medical Use of Marijuana Act's requirements; KATU News, *Medical marijuana leader convicted of drug charges* (June 9, 2003), http://www.katu.com/news/story.asp?ID=58243 (Oregon defendant sentenced to three-and-a-half year term for possessing 37 cannabis plants and over one pound of dried marijuana at his home, in violation of Oregon medical cannabis law limit of seven plants or seven ounces of dried cannabis).

[17] Respondents are aware of only one judicial decision applying the court of appeals' ruling in this case, and in that case the district court emphasized that the evidence shows the parties "do not purchase, sell, or otherwise distribute marijuana." *County of Santa Cruz v. Ashcroft*, No. 03-CV-01802-JF, 2004 WL 868197 at *1 (N.D. Cal. Apr. 21, 2004).

that ground was relied upon, rejected, or even considered by the District Court or the Court of Appeals." *Washington v. Yakima Indian Nation*, 439 U.S. 463, 476 n.20 (1979). In the courts below, Respondents raised several additional grounds in support of a preliminary injunction.[18]

a. Respondents have raised a non-constitutional claim based on the doctrine of medical necessity as an implied exemption to the CSA. This Court avoids deciding constitutional issues when it is fairly possible to do so. *See Jones v. United States*, 529 U.S. 848, 857, 859 (2000) (avoiding "grave and doubtful constitutional questions" under the Commerce Clause by construing a federal statute so as not to permit federal officials to reach into "a dwelling place used for everyday family living"); *Ashwander v. TVA*, 297 U.S. 288, 345-48 (1936) (Brandeis, J., concurring).

In *OCBC*, a case involving a medical cannabis cooperative, the Court held that medical necessity is not a defense to manufacturing and distributing cannabis. 532 U.S. at 494 ("[W]e hold that medical necessity is not a defense to *manufacturing and distributing* marijuana.") (emphasis added). In a separate opinion, Justice Stevens, joined by Justices Souter and Ginsburg, emphasized that "whether the defense might be available to a seriously ill patient for whom there is no alternative means of avoiding starvation or extraordinary suffering is a difficult question that [was] not presented" in *OCBC*. *Id.* at 501. In this case, which could result in starvation, extraordinary suffering, and

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[18] The argument for considering the additional grounds raised by Respondents is strengthened by the possibility that a majority of the members of this Court could conclude that Respondents are entitled to relief even if they could not agree on a single rationale for the result. *See, e.g., Welsh v. United States*, 398 U.S. 333, 335, 345 (1970).

even death, the Court should address the "difficult question" that was not presented in *OCBC*.[19]

b. This Court has held "[i]n a long line of cases," that the Due Process Clause of the Fifth Amendment protects certain fundamental rights and liberties. *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997). *See also Lawrence v. Texas*, 123 S. Ct. 2472, 2475 (2003) ("[l]iberty protects the person from unwarranted government intrusions into a dwelling" and "presumes an autonomy of self that includes . . . certain intimate conduct"). The constitutional protection of unenumerated but fundamental rights draws additional support from the Ninth Amendment, which states that "[t]he enumeration in the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people." U.S. Const. amend. IX.

This case implicates perhaps the most fundamental right of all, the right to preserve one's life. *See* App., *infra*, 4a-5a ("It could very well be fatal for Angel to forego cannabis treatment."). It also implicates the fundamental right to alleviate unnecessary pain and agony and protect bodily integrity. In *Glucksberg*, five Justices indicated that these rights may well be entitled to constitutional protection. *See Glucksberg*, 521 U.S. at 736-37 (opinion of O'Connor, J.) (noting that, under the laws at issue in *Glucksberg*, "[a] patient who is suffering from a terminal illness and who is

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[19] The Court's opinion in *OCBC* states, in dicta in a footnote, that "nothing in our analysis suggests that a distinction should be drawn between the prohibitions on manufacturing and distributing and the other prohibitions in the Controlled Substances Act." *Id.* at 494 n.7. Of course, this Court is not bound by dicta in its prior opinions. In this case, where Respondents face the prospect of severe pain, suffering and death, the Court should consider the medical necessity issue identified by the concurring opinion in *OCBC*.

experiencing great pain has no legal barriers to obtaining medication, from qualified physicians to alleviate that suffering"); *id.* at 789 (Ginsburg, J., concurring) (agreeing with Justice O'Connor); *id.* at 745 (opinion of Stevens, J.) ("Avoiding intolerable pain and . . . agony is certainly [a]t the heart of [the] liberty to define one's own concept of existence, of meaning, of the universe, and of the mystery of human life."); *id.* at 777 (opinion of Souter, J.) (the "liberty interest in bodily integrity" includes "a right to determine what shall be done with his own body in relation to his medical needs"); *id.* at 790 (opinion of Breyer, J.) (Due Process Clause may protect right to "personal control over the manner of death, professional medical assistance, and the avoidance of unnecessary and severe physical suffering – combined").

The activities at issue here involve some of "the most intimate and personal choices a person may make in a lifetime, choices central to personal dignity and autonomy." *Planned Parenthood of Southeastern Pa. v. Casey*, 505 U.S. 833, 851 (1992). To deny patients access to medication recommended by their physicians and necessary to relieve their excruciating pain and extend their lives would "demean their existence" and "control their destiny." *Lawrence*, 123 S. Ct. at 2483. This type of "suffering is too intimate and personal for the [federal government] to insist . . . upon its own vision." *Casey*, 505 U.S. at 853.[20]

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[20] In *United States v. Rutherford*, 442 U.S. 544, 552 (1979), the Court held that the Federal Food, Drug and Cosmetic Act contains "no implicit exemption for drugs used by the terminally ill," and therefore the court of appeals should not have "directed the FDA to promulgate regulations" permitting the drug laetrile to be marketed in commerce to terminally-ill cancer patients. *Id.* at 551. The Court did not decide any constitutional issue in *Rutherford*. In this case, moreover, unlike in *Rutherford*, Respondents are not seeking to require the federal government to take (continued...)

There is no longstanding history in this country of laws directed at medical use of cannabis. Medical use of cannabis was not illegal under federal law until the CSA was enacted in 1970.[21] In any event, "'[h]istory and tradition are the starting point but not in all cases the ending point of the substantive due process inquiry.'" *Lawrence*, 123 S. Ct. at 2480 (quoting *County of Sacramento v. Lewis*, 523 U.S. 833, 857 (1998) (Kennedy, J., concurring)). In addition, in *Lawrence* this Court rejected the fundamental rights analysis of *Bowers v. Hardwick*, 478 U.S. 186 (1986), and protected the "liberty" of the persons involved to engage in the conduct at issue without ever finding that the liberty in question was fundamental.

Current practices, particularly those authorized by an increasing number of States, are also significant. *See id.* at 2480. *See also supra* note 1. As the States consider and act on a variety of measures intended to protect their citizens' "interest in obtaining relief from the suffering that they may experience in the last days of their lives," the "challenging task of crafting appropriate procedures for safeguarding [their citizens'] liberty interests" should be "entrusted to the 'laboratory' of the States . . . in the first instance."

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any affirmative action. Respondents are seeking instead the right to treat themselves with State-approved, physician-recommended medication that they or their caregivers produce for themselves.

[21] *See* Richard J. Bonnie & Charles H. Whitebread, *The Forbidden Fruit and the Tree of Knowledge: An Inquiry into the Legal History of American Marijuana Prohibition*, 56 Va. L. Rev. 971, 1161, 1165 (1970). Under the federal Marihuana Tax Act of 1937, persons could legally obtain marijuana if they paid a transfer tax ($1 per ounce if they registered with the Internal Revenue Service, $100 per ounce if they did not). *Id.* at 1060, 1084 n.6. No State criminalized marijuana possession until Utah did so in 1915, and the 22 States that banned marijuana by the 1930s exempted medical use. *Id.* at 971, 1010, 1027.

Glucksberg, 521 U.S. at 737 (O'Connor, J., concurring) (internal quotation marks omitted).

CONCLUSION

The Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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June 2004

APPENDIX

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANGEL McCLARY RAICH, DIANE MONSON, JOHN DOE NUMBER ONE, and JOHN DOE NUMBER TWO,

Plaintiffs,

v.

JOHN ASHCROFT, as United States Attorney General, and ASA HUTCHINSON, as Administrator of the Drug Enforcement Administration,

Defendants.

DECLARATION OF FRANK HENRY LUCIDO, M.D. IN SUPPORT OF PRELIMINARY INJUNCTION

I, Frank Henry Lucido, M.D., declare as follows:

1. I am a physician licensed to practice medicine in California. I am Board Certified in Family Practice, and have been practicing general Family Medicine at 2300 Durant Avenue, Berkeley, California, since 1979. I have been on the Active Medical Staff of Alta Bates Hospital for over 20 years. I have also been the medical director of skilled nursing facilities. I have been Chairman of the Alta Bates Hospital Medical Education Committee, and a member of the Ethics Committee and the Family Practice Advisory Board. I was voted "Best Doctor in Berkeley" by the Daily Californian newspaper in 1993. Attached hereto is my Curriculum Vitae.

2. I am Angel McClary Raich's primary care physician, and have been coordinating her care with numerous medical specialists. Angel presents a complex and complicated set of conditions. It is my opinion that Angel cannot be without cannabis as medicine because of the precipitous medical deterioration that would quickly develop.

3. Angel is seriously ill. Her medical records confirm that she has numerous serious medical conditions, including life-threatening weight loss, nausea, severe chronic pain (from scoliosis, temporomandibular joint dysfunction and bruxism, endometriosis, headache, rotator cuff syndrome, uterine fibroid tumor causing severe dysmenorrhea, chronic pain combined with an episode of paralysis that confined her to a wheelchair), post-traumatic stress disorder, non-epileptic seizures, fibromyalgia, inoperable brain tumor (probable meningioma or Schwannoma), paralysis on at least one occasion (the diagnosis of multiple sclerosis has been considered), multiple chemical sensitivities, allergies, and asthma, and her body reacts with violent side effects to almost all pharmaceutical medications.

4. Angel will suffer imminent harm without access to cannabis. Chronic severe pain constitutes harm. Nausea and anorexia resulting in weight loss, risking malnutrition, cachexia, starvation, and death, constitute harm. Untreated seizures constitute harm. Post-traumatic stress disorder, inadequately treated, constitutes harm. Angel needs to medicate every two waking hours. If she misses a treatment, it could quickly have dangerous repercussions for her health. She clearly loses weight, and would risk wasting syndrome and death, without cannabis. No one knows why she can't hold onto her weight. Angel could become gravely ill if she loses too much more weight. Angel becomes debilitated from severe chronic pain. The pain is bad enough even with cannabis, but it flares up immediately and becomes unmanageable without cannabis.

5. There are several studies concluding that cannabinoids may have significant anti-tumor activity. I feel that Angel should continue medicating with cannabis in the hope that, among its other benefits, it will prevent her brain tumor from growing.

6. Cannabis works well for Angel in a way that no other medicine has or can be expected to in order to alleviate Angel's medical conditions or symptoms associated with them.

7. Angel has no reasonable legal alternative to cannabis for the effective treatment or alleviation of her medical conditions or symptoms associated with the medical conditions because she has tried essentially all other legal alternatives to cannabis and the alternatives have been ineffective or result in intolerable side effects. Angel has tried all of the following medications, which all resulted in unacceptable adverse side effects:

Marinol
Demulen Tablets
Codeine
Tylenol #3
Erythromycin
Acetaminophen with Codeine
Serzone
Amitriptyline
Clonidine
Meclizine
Promethazine
Depakote
Prazosin
Carbamazepine
Imipramine
Trazodone
Methadone
Hydrocodone

Dicloxacillin
Chlorpheniramine/Phenylpropanolamine
Beclonmethasone
Vicodin
Dilantin
Tagretol
Desipramine
Valproic Acid
Seldane
Lorazepam
Paxil
Lamotrigine (Lamictal)
Elavil
Soma
Albuterol Solution
Fentanyl
Versed

Most of the medicines listed above, and others not even listed, make Angel vomit violently. Other side effects of the above medications include hot and cold flashes, shakes, diaphorasis, itching, nausea, and drowsiness. In addition, Marinol caused rapid heart palpitations, dizziness, shaking, and insomnia. Diagnostic lumbar tap and sympathetic block and stellate ganglion block in the throat have been performed with no lasting benefit. After a certain number of medications have been tried, it would be malpractice to subject the patient to further unnecessary harm.

8. Angel's medical records confirm that she uses two and one-half ounces of cannabis per week, in various forms, including oral ingestion, smoking, vaporizing, and topical application. There are no other treatments that I can reasonably recommend for Angel, other than what we are already doing in her course of treatment. It could very well

be fatal for Angel to forego cannabis treatments because of a law that may purport to prohibit the medical use of cannabis.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on this 29th day of October, 2002, in Oakland, California.

/s/ FRANK H. LUCIDO, M.D.
FRANK H. LUCIDO, M.D.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANGEL McCLARY RAICH, DIANE MONSON, JOHN DOE NUMBER ONE, and JOHN DOE NUMBER TWO,

Plaintiffs,

v.

JOHN ASHCROFT, as United States Attorney General, and ASA HUTCHINSON, as Administrator of the Drug Enforcement Administration,

Defendants.

DECLARATION OF DR. JOHN ROSE IN SUPPORT OF PRELIMINARY INJUNCTION

I, John Rose, declare as follows:

1. I am a medical doctor, duly licensed to practice in the State of California, and have been so for 29 years. My practice is located at Brownsville and Yuba City, California. My practice consists of general family medicine. I am a board certified specialist in Family Practice. I am on the Medical Staff of Fremont and Rideout Hospitals. I am also Vice-President of Sutter North Medical Group. Attached hereto is my Curriculum Vitae.

2. I have been the personal physician and family doctor for Diane Monson for nine years and am completely familiar with her medical condition over those years. I have coordinated her care with various other medical practitioners.

3. As indicated from her medical records, Diane suffers from a number of medical conditions. She has degenerative disease of the spine. As a result of her medical

condition, Diane Monson suffers from Chronic Back Pain and Spasms.

4. In 1999, pursuant to California State law, medical cannabis was recommended for Diane as treatment of her medical conditions, including her Chronic Back Pain and Spasms. I have determined that Diane Monson's health benefits from such a recommendation, that medical cannabis use is deemed appropriate for Diane Monson, and that medical cannabis provides necessary relief for Diane's pain and suffering.

5. Although Diane has tried other medical alternatives to medical cannabis, including Flexeril, a muscle relaxant, and Feldene, a powerful anti-inflammatory, those prescription drugs have proven to be either ineffective in relieving Diane's pain and suffering or produce intolerable side effects. In addition, these prescription medications have long term effects that may prove to be harmful to Diane's physical well-being.

6. I have also prescribed Vicodin and Vioxx to attempt to alleviate Diane's pain and suffering. Yet, Vicodin, an addictive drug, seems to have a nauseating effect upon her and I have recommended that she avoid it because of the extremely sick stomach that it leaves her with for several days after any use. In addition, Vioxx, although it appears to relieve Diane's inflammation associated with her back pain, does not relieve her painful spasms.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on this 29th day of October, 2002, in Brownsville, California.

/s/ JOHN B. ROSE, M.D.
JOHN B. ROSE, M.D.

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANGEL McCLARY RAICH, DIANE MONSON, JOHN DOE NUMBER ONE, and JOHN DOE NUMBER TWO,

Plaintiffs,

v.

JOHN ASHCROFT, as United States Attorney General, and ASA HUTCHINSON, as Administrator of the Drug Enforcement Administration,

Defendants.

DECLARATION OF DIANE MONSON IN SUPPORT OF PRELIMINARY INJUNCTION

I, Diane Monson, declare as follows:

1. I am 45 years old and for last 24 years I have lived in the city of Oroville, located in Butte County, California. I am one of the Plaintiffs in the above-entitled action.

2. I am a medical cannabis patient, and have been since March of 1999. I use medical cannabis on the recommendation of my physicians for the treatment of my Severe Chronic Back Pain and Spasms, which have plagued me since 1989. Dr. Rose has been my personal physician for many years and is completely familiar with my medical condition.

3. The constant spasms with which I suffer, and which are related to, and caused by, my chronic back pain, are an extremely painful experience in their own right, comparable in intensity to an uncontrollable cramp.

Cannabis completely eliminates these spasms as no other substance has been able to do. Without cannabis, these spasms would be torturous and unbearable no matter whatever other medications were available.

4. I have tried numerous prescription and non-prescription drugs for my Severe Chronic Pain and Spasms, including Flexeril, a muscle relaxant, and Feldene, a powerful anti-inflammatory. From the beginning those drugs caused me significant problems. Flexeril has a very powerful effect on me and makes me groggy in any amounts, even if I halve the recommended dosage. If I take the prescribed dosage, I inevitably fall asleep and am unable to function as a normal human being. Flexeril has been ineffective in relieving my spasms and also has many undesirable side effects. In addition, I am quite concerned about its effect on my organs, including my kidneys and liver, over the many decades of necessary use, even if it were effective in relieving my pain.

5. The other drugs I have had prescribed over the years are Vicodin and Vioxx. Vicodin, an addictive drug, has a complete nauseating effect upon me and I avoid it because of the extremely sick stomach that it leaves me with for several days after any use. Vioxx is supposed to be easier on the stomach, so I take it occasionally to reduce the inflammation associated with the back pain. Regardless, it does not relieve the spasms.

6. I am employed as the office manager for one business and the bookkeeper for several other businesses as well. Inevitably, the stress levels with these responsibilities rise throughout the day. The more stress I have, the worse the back pain is. I have sought out various methods of self-help in dealing with my pain and suffering, including exercises, long walks, yoga and stretches, which I do each and every night. I am keeping my weight down and eat a healthy diet. I walk a very hard mile and a half per day,

which helps to strengthen the back muscles as well. Regardless of this regimen, my chronic back pain and spasms generally start by late morning each day; when the yoga and walking that I do earlier that day wear off. From that point in the day forward the pain worsens by the hour. Before I began using medical cannabis I was having back spasms multiple times per week. Once a spasm starts it is very difficult to relax my back enough to make it stop. Generally speaking, work is impossible during spasms, sitting down is impossible, and the only way to even partially relieve the severe pain it causes is to lie down altogether.

7. In early 1999, when I first tried cannabis for my back pain and spasms, I immediately noticed a massive improvement in my level of pain. And from the moment I began to use medical cannabis my spasms decreased in frequency about 75 percent. The medicine relaxes me without making me sleepy, and so I can work again without pain. I still do most of the self-help things I have been doing for years, and now I have added medical cannabis to my self-help list. In addition to the smoking method, I use a vaporizer for the cannabis. My physicians recommended the vaporizer. Another delivery method I have used with cannabis is a sublingual spray form. This is a method I use in a more crowded situation, where other people might object to the smoke from my medicine.

8. In early 2002 I elected to stop hormone replacement therapy. I had taken HRT for nearly 14 years at that time and I began to worry about the side effects of that medicine and the recently reported risks associated with such use. But I had no idea of the effect that quitting would have upon my body and my psyche. The physical symptoms were fairly intense, with hot flashes and trembling hands. The mental repercussions were even more debilitating. I became anxious and had a hard time concentrating. Tears would come easily for little to no reason. Although I have always sought out new clients and work, I was overwhelmed by

responsibilities and sought no further clients. I have to say my self-confidence plummeted in those first few months after ending my hormone replacement therapy. I then discovered that cannabis helped me through this stage in my life, too. While contemporaries are being prescribed Paxil and Prozac and other drugs to help with these menopausal symptoms I rely on cannabis to calm my psyche and alleviate the symptoms. Its effect upon me is soothing and I find that cannabis alleviates the physical symptoms as well.

9. With regard to all of the above symptoms and medical conditions, I have found medical cannabis to be both effective and free of undesirable side-effects. Cannabis virtually eliminates my debilitating and extremely painful Spasms and greatly relieves my Chronic Back Pain. Without cannabis, my spasms would return and I would be subjected to intense pain that cannot be relieved any other way. I have tried various combinations of prescription pharmaceutical medications, but they are often ineffective and they always disrupt my quality of life by interfering with my ability to function.

10. On August 15, 2002, deputies from the Butte County Sheriff's Department and DEA agents visited our home. After a discussion with them, the sheriff's deputies agreed that my cultivation and possession of six cannabis plants was lawful under the Compassionate Use Act of the State of California. The DEA agents insisted on seizing and destroying my plants. For three hours we talked with them, reasoned with them, and finally pleaded with them to leave the plants alone. The local District Attorney, Mike Ramsey, also fought for my right to keep my medicine by calling John K. Vincent, the U.S. Attorney for the Eastern District of California, to plead with him to keep the DEA agents from destroying my medicine. All of the efforts by my local law enforcement agents and the Butte County District Attorney were to no avail. As I stood and watched, the DEA agents chopped down my medicinal plants. I was crying and my

back begun to tighten up; for the rest of the week I experienced debilitating back spasms. I have not had a good night's sleep since the actions of the DEA in destroying my plants. My 20-year marriage is suffering as well because my wonderful husband also has to deal with all the repercussions of this action. We do not feel safe; we have had our civil rights and our rights under California law taken from us in our own back yard. I must now find a way to get my medicine from another source. To do so will be very expensive and I will have no idea what the quality of the medicine I receive will be.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on this 29th day of October, 2002, in Oroville, California.

/s/ DIANE MONSON
DIANE MONSON

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

ANGEL McCLARY RAICH, DIANE MONSON, JOHN DOE NUMBER ONE, and JOHN DOE NUMBER TWO,

Plaintiffs,

v.

JOHN ASHCROFT, as United States Attorney General, and ASA HUTCHINSON, as Administrator of the Drug Enforcement Administration,

Defendants.

DECLARATION OF ANGEL McCLARY RAICH IN SUPPORT OF PRELIMINARY INJUNCTION

I, Angel McClary Raich, declare as follows:

1. *Background:* I am a "medical necessity" medical cannabis patient. My medical records show I run a very real risk of malnutrition and starvation without the use of medical cannabis. I would starve to death without cannabis. I have been diagnosed with more than ten serious medical conditions including an inoperable Brain tumor, life-threatening wasting syndrome with severe weight loss borderline cachexia, a Seizure Disorder, Nausea, several Severe Chronic Pain Disorders, including Scoliosis, Temporomandibular Joint Dysfunction Syndrome, Bruxism, Endometriosis, a Tumor in my Uterus, and other documented medical conditions. My medical conditions are very complicated, complex, and difficult to manage. I am blessed to have a great primary care doctor and many dedicated specialists and extensive medical records. I have been permanently disabled since September 1995. I am a mother

of two children. My son is 16 and my daughter is 14 years old.

2. I have been using cannabis as a medication for about five years, every two waking hours, every day, and I have not been adversely effected by my medical use of cannabis -- just the opposite. On a good day if you were to see me face to face you may not even know I am disabled. I do not enjoy being disabled nor do I like taking medication every two hours, but I have no alternative. Medical cannabis keeps me alive and greatly reduces my suffering. I can not use Marinol pills; because of my extreme drug sensitivity, I am just not able to take them. Only the natural cannabis plant works for me.

3. I was in a wheelchair from January 1996 to August 1999 because of my many medical conditions and their debilitating effects on my body. In 1997 before the use of cannabis I was debilitating quite fast. All of my doctors were not getting anywhere with my treatment and nothing seemed to work, but by August of 1999 I was walking again because of medical cannabis. Cannabis was responsible for getting me out of my wheelchair and restoring my mobility on the whole right side of my body.

4. I had complications taking nearly every type of synthetic medication my doctors prescribed. Practically every single medication my doctors gave me would make me extremely ill, causing me to vomit violently, sometimes for 24 hours. I had allergic reactions and chemical sensitivities to nearly all of the medications my doctors prescribed. For example, I am allergic to all narcotics and opiates. When I take any narcotic or any opiate, within about 20 minutes I am on the floor with my face in a pan or small trash can violently vomiting, I get the shakes, hot and cold flashes, and insane itching that nothing can stop. Being partially paralyzed on the floor, it was Hell. I could not hold myself up. I

sometimes needed someone to hold up my head while I was vomiting. I was simply too weak to move.

5. By 1997 my doctors told me I would never walk again and that they could not control my pain. My medical conditions were triggering each other as I became increasingly worse. That is when my doctors and I started talking about medical cannabis as a medication to help alleviate my pain and suffering.

6. My specialists do not know why I can not hold onto my weight. In 2000, my wasting syndrome was out of control, becoming life-threatening and causing my weight to drop to only 94 pounds. My health -- even my life -- was at great risk. My doctor worked quickly to raise the levels of cannabis in my bloodstream. Every time my level of cannabis drops, I can lose as much as one pound per day. My doctor says I must never be without cannabis treatments. I will always have to fight to keep my weight balanced; however, without cannabis it would make that fight impossible.

7. I suffer greatly from pain every single day. The prolonged pain and suffering from my medical conditions significantly interferes with my quality of life. I have not been pain-free for several years, but at least I am not in a wheelchair anymore thanks to medical cannabis. My experience is that cannabis allows me to combat all of my diseases daily and gives me the strength I need to fight to stay alive.

8. The hardest part of being disabled is watching the suffering in your children's eyes as they watch you endure such suffering with no end in sight. They experienced great joy knowing that cannabis was responsible for giving their mommy back to them. Cannabis saved my life and gave my children their mother back. I would rather use cannabis to end the suffering from my conditions, and be alive, than to

suffer endlessly while I die knowing that there *is* something that could help treat my conditions.

9. It may be difficult for the reader to comprehend the amount of intense pain and suffering described herein. When you become disabled one of the most difficult things is accepting that you are disabled and life as you knew it has ceased to exist. Your life changes forever from that moment on. When you are told you are *permanently* disabled it is even worse. Being permanently disabled has been very difficult for me to deal with, day in and day out, year after year. It is equally difficult for my family. As I fight to stay alive every day, my biggest challenge on a daily basis is combating my diseases, trying to minimize my suffering, and at the same time doing my best not to go into "overload" from excruciating pain. I do the best I can while remembering to have compassion for all life, and keeping my dignity and my grace. I am finding it a challenge to have compassion for the United State Government, when the Government wants to sentence me to death for being disabled and fighting to use a plant that is saving my life. I am weak and weary and afraid of being raided, and I am afraid of what my death would do to my children and my husband. I am afraid of being tortured by being denied cannabis, and I am afraid of the excruciating pain that would cripple me while being forced to starve to death.

10. The Drug Enforcement Administration (DEA) is attacking sick, disabled, and dying Americans. Since September 11, 2001, the DEA has continued raids on the California medical cannabis community. The DEA has been terrorizing and doing harm to other patients using cannabis. This is creating great fear for me and my children. I am just fighting for my life. I promised my children I would fight to stay alive and I am not about to go back on that promise.

My Medical Conditions, Symptoms, and the Stories Behind My Suffering:

11. I will do my best to explain all of my complicated medical conditions starting in my childhood. The time period between 1995 and 1999 is the most difficult and is very painful to explain. All of my doctors knew I was seriously ill and suffering from severe pain. The doctors became frustrated because they could not figure out what was happening to the right side of my body. My doctors kept changing my diagnoses while trying to unlock the mysteries to why my health was failing, only to end up with more questions than answers. Many doctors told me that I was too complicated for them to understand, that they could no longer help me, and then referred me to another doctor. I had too many medical conditions affecting me the same time.

12. *Post Traumatic Stress Disorder (P.T.S.D.):* From the age of four years old to when I was in the six grade my grandfather repeatedly molested, threatened, imprisoned, and tortured me. My doctors say that my grandfather was one of the worst child molesters on their rating scale. My grandfather was just below the child molesters that kill children. I was physically and mentally abused by other family members throughout my lifetime. I have worked very hard throughout my life to heal my wounds by getting the help I needed, and by being a good mother and a good citizen who obeys the laws. It was a long road, and I fought hard to keep abusers out of my life. I was diagnosed with P.T.S.D. in 1987.

13. Since the Federal Government escalated its raids on California medical cannabis patients, I have been experiencing more intense P.T.S.D. symptoms. I find myself overwhelmed feeling suddenly in danger, and I have become consumed with feelings of fear, helplessness, and horror. The constant threat I feel is making me re-experience my past traumas. It is causing me to feel the same mental, emotional, and physical experiences that occurred during the past traumas. This includes thinking about my past trauma and the threat of losing my life. For the past year I have been

experiencing the following symptoms due to the threats and attacks from the United States of America's war against cannabis patients: I get bad dreams and nightmares of being attacked and killed by the federal government. I am also having flashbacks and nightmares of being unsafe and unprotected. Every time another patient or provider is raided, I am overwhelmed with anxiety and fear of being in danger, wondering if I will be the next patient to be attacked. I am deeply concerned about my own health and safety. I become increasingly more upset every time I am reminded about the trauma we patients face at the hands of our own federal government. I get real angry and aggressive feelings because I feel that I have to defend myself before the federal government breaks in my door, attacks me, incarcerates me, and kills me. My brain can not handle any kind of trauma. I feel the trauma is happening again, only now it is the federal government abusing me. I feel as if I am in danger. I experience sensations of panic, and trying to escape, and of thinking about attacking first, yet I am too sick and my body is too weak. These experiences are not voluntary; no matter how hard I try, I usually can not control them or stop them from happening. I am just as innocent now as I was when I was a child because I am sick, disabled, and fighting to stay alive. I had my P.T.S.D. symptoms pretty much under control until the federal government started escalating its raids against California cannabis patients. Cannabis helps keep me from living in my past, helps me deal with flashbacks, and helps me cope with the P.T.S.D. symptoms being brought on by the federal government's actions against medical patients. It helps me have the courage to face my past abuse, the feelings of never being safe or protected by anyone, my anger, my sadness, and my hurt in a calm safe manner. Cannabis allows me to cope, and manage my P.T.S.D. symptoms.

14. *Scoliosis:* Scoliosis is a curvature of the spine. My first diagnosed medical condition was Scoliosis. I was in

the seventh grade when it was diagnosed. The doctor said my back is shaped as a backwards "S" and my spine is twisted and rotated. The doctor said that if my spine were rotated two more degrees he would have had to do surgery and put a steal rod into my back, but instead I had to wear a back brace for three years. This was my first experience with chronic pain. The chronic pain in my back has never gone away, still to this day. In fact, as the years go by the chronic burning pain has become more intense and more difficult to tolerate. I experience burning pain in my back muscles and around my vertebrae. I learned at a young age how difficult it can be to be a handicapped person and how mean people can be to the disabled. While I was wearing my back brace children and adults made fun of me. I lost all of my friends, and no one wanted to hang around me anymore, just because I was in a back brace. It made my seventh through ninth grade years of school very lonely. I was not able to do much of anything; I was hurt, embarrassed, and in chronic pain. I could not even turn my head because the brace came up under my chin and went down to my tale bone. The brace was very painful. I remember crying all the time.

15. For years, my scoliosis has given me prolonged chronic pain in my spine that interferes with my quality of life. It also affects my mobility daily. One part of my spine is constantly moving, making loud painful cracking noises. Another part of my spine locks up, which is extremely painful. When this happens my neck, jaw, collar bone, shoulder, and rib cage lock-up tight, preventing me from moving freely and creating an unstable body structure. In that condition moving my body creates severe chronic pain and excruciating chronic burning pain in my neck, jaw, back and sides, ribs, and down my right arm. Staying still is equally painful. Without cannabis my tendons, and ligaments feel like an over-stretched rubber band about ready to snap. Cannabis makes my muscles, tendons, and ligaments more pliable, allowing my body to move and go

about my daily life. Cannabis allows me to cope with the severe chronic pain and burning every movement brings to my body. I notice a big difference when eating cannabis before going to physical therapy, it helps relax my muscles, making it easier for my physical therapist to help relieve some of the pain and burning and unlock my vertebrae and my other joints.

16. *Endometriosis:* Endometriosis come from the word "endometrium," which is the tissue that lines the inside of the uterus and builds up and sheds each month in the menstrual cycle. In Endometriosis, tissue like the endometrium is found outside the uterus, in other areas of the body. These growths cause disabling chronic pain, scar tissue, and other problems. Just before I turned sixteen years old I was diagnosed with endometriosis and my doctor told me to go home, pack a bag, and meet him at the hospital because they had to do surgery. My endometriosis was out of control. I was in excruciating pain and the cramps made it hard to move around. During the first two days of my period each month I was not be able to move at all. I had to stay down. I would curl up in a tight ball and cry for hours. In my second surgery for endometriosis the doctors not only found the endometriosis, but they also found several cysts. By the time I was 21 years old I had already had three surgeries for endometriosis. Through the years my endometriosis has changed, and the operations become more complicated. Every time they open my stomach up they risk damaging my organs, it makes it more difficult to work around the scar tissue. About every four to five years I must have surgery for endometriosis and scar tissue. I can always tell when it is time for surgery because my periods become overloaded with pain, I am no longer able to move around, and I can't move my legs to walk. I become paralyzed from the excruciating pain and I bleed so heavily that I become light-headed from such fast blood loss. The pain can cause me to have seizures. To date, I have had seven surgeries for

endometriosis, and with six out of the seven I woke up in the recovery room violently vomiting. The drugs made me vomit very violently, sometimes for over 24 hours, and after just having surgery vomiting is extremely painful. In 2001 my pain from endometriosis again became so severe that I was in tears. I had surgery in November 2001. The hospital gave me a room on the oncology floor so I could medicate with cannabis, using my vaporizer in the hospital promptly after coming out of recovery. Most patients after having surgery can have a narcotic or opiate. When I got back to my room after surgery I was so weak, I was not able to prepare my cannabis or my vaporizer. A family member helped me by holding up my vaporizer while I medicated with cannabis. The nurses at the hospital all asked about the medical cannabis and how well it helped my medical conditions, and they wanted to see me vaporize with cannabis. My doctor told me I recovered faster with cannabis than the patients who use narcotics or opiates. The doctors and nurses were all amazed because they got to see how effectively cannabis works right before their eyes.

17. *Rotator Cuff Syndrome:* After my son was born in 1986 I went back to work in a lumber mill where I became seriously injured working at a glue machine. I could not move my right shoulder. I was in tears and in extreme pain and muscle spasms. I was taken to the hospital where I was diagnosed with rotator cuff syndrome. After having it for many years, the chronic burning pain is worse than when I was first injured. I went to therapy for months until I was sent to another specialist who gave me five sessions, of five shots each of cortisone in my right shoulder and my neck. The cortisone helped for about three years, then the excruciating pain returned. My right shoulder never went back to normal. I have problems doing anything repetitive with my right arm, hand, shoulder, or shoulder blade. I suffer from excruciating burning pain, my shoulder freezes up, and I loose the mobility in my shoulder. It is cannabis

that allows me to gain back some of this mobility. Through the years I have also had several injuries to my right shoulder (See paragraph number 18.). Cannabis makes the muscles, tendons, and ligaments around my shoulder joint more pliable, allowing me the use of my right arm. Cannabis allows me to cope with the severe chronic pain and chronic burning associated with rotator cuff syndrome. I noticed a big difference when eating cannabis before going to physical therapy; it helps relax my muscles making it easier for my physical therapist to help relieve some of the chronic pain and burning and unlock my shoulder and my shoulder blade.

18. *Other Past Spinal Injuries:* The year of 1991 was a bad year for me. I was in three accidents in a two month time period. All three accidents injured my spine and the right side of my body. I slipped and fell, injuring my spine on the right side; I was rear-ended by a big truck, injuring my back, neck, pelvic area, and bladder; and then a car hit me while I was walking, injuring the right side of my body again. It was all very painful and my body did not heal as fast as it should have. I had to see a chiropractor and a physical therapist for months. My body is extremely fragile and it does not heal easily, so I do a lot of suffering. Having injury upon injury caused permanent damage to my body structure. I have continued to endure constant chronic pain and chronic burning ever since.

19. *Multiple Chemical Sensitivities, Allergic Reactions, and Asthma:* My treatment is complicated by the fact that I am violently allergic or I have severe multiple chemical sensitivities to almost all pharmaceutical medicines. This interferes with the treatment of all of my medical conditions, and it means my suffering can not be controlled by synthetic medications. This makes it extremely difficult for my doctors effectively to help me combat my diseases. I have problems with asthma and allergies, which make me wheeze and cough from the lack of air. I also have problems with chemicals that are in many skin products, air fresheners,

perfumes, and detergents. I am not able to use pharmaceutical asthma medications and I am not able to take anything for my allergies. I become nauseated from most over-the-counter medications. So I just suffer. All of my doctors including my specialists have been supportive when it comes to my medical use of cannabis. I do not have any other alternative to battle my many complicated and complex medical conditions. Cannabis *is* maintaining my health. I am not just sensitive to synthetic prescriptions, I am also chemically sensitive to things such as chemicals that some cannabis growers use. These additives are not harmful to most patients; I am just extremely sensitive.

20. *Severe Chronic Pain:* Every second I experience chronic pain in varied degrees, ranging from a medium level of pain to a complete overload of pain, brought on by one or a combination of the chronic pain conditions from which I suffer. When I am able to sleep it provides meager escape from the ever present chronic pain I experience. I have to force myself to do everything, including getting out of bed every day. I wake up several times per night and rarely get a restful night's sleep because of the chronic pain. Because I have an extremely high pain threshold, I can occasionally function and still try to go about my life, even in the midst of experiencing pain. On frequent occasions, however, the chronic pain becomes so great that I experience difficulty performing everyday activities, or the chronic pain is so overpowering that I become completely debilitated and cannot get out of bed. Then I am usually down for a few days.

21. When my nervous system becomes too overloaded with pain I experience muscle spasms and seizures. My treatment is complicated by the fact that I am violently allergic to almost all pharmaceutical medicines. Cannabis, however, has the effect of making it easier for me to tolerate my constant chronic pain, although it does not make the pain go away. The efficacy of cannabis is well

established as an analgesic. Cannabis is the only medication that keeps me alive and makes my severe chronic pain more manageable. Without cannabis, my chronic pain would be even more torturous.

22. *Paralysis:* Due to all of the traumatic events in my life, in 1995, one last traumatic event caused my brain shut the whole right side of my body down for years, leaving me in a wheelchair until late 1999. I was barely hanging on because of all the pain and suffering I was forced to endure. It took many years and many doctors to diagnose all of my medical conditions, and I was suffering unexplainable, excruciating pain. My doctors were giving me many different kinds of prescription drugs; these same prescription drugs were making me vomit violently. My health continued to spiral downward, leaving me with no hope at all. Months went by. After feeling that my doctors were not helping me I changed doctors once again. Even though I felt like I was drowning in pain, I kept the promise I made to my children that I would never give up again. I was going to do whatever I had to do, to get well and become healthy, or as healthy as I could be given my medical conditions. A new doctor sent me for a brain MRI in May 1999. It showed I have a one centimeter brain tumor on the left side of my brain, adding yet another physical medical condition. My doctor also sent me for an EEG, which showed I was having seizures. Then my doctor sent me to the Stanford University Hospital Epilepsy Center and a brain tumor specialist. Because I was not able to use the right side of my body and I was having cognitive functioning complications. During this same timeframe I was once again diagnosed with Post Traumatic Stress Disorder.

23. The use of cannabis was responsible for getting me out of my wheelchair. After I began using cannabis in 1997 I started feeling nerve sensations in my body. I stopped using cannabis from off the street in 1998. I started to get better from the medicine I obtained from the Oakland

Cannabis Buyers' Cooperative. The better quality cannabis made all the difference in the world. The sensation slowly started coming back into my right side. I was so happy, I really wanted to walk again. By August 1999 I was able to move my right arm, toes, ankle and my foot. Then I was able to make small movements in my toes and fingers, and eventually I was walking again. Learning to walk again was very difficult and painful. Without cannabis being continually in my body I would surely become wheelchair bound once again; this possibility is very frightening to me and my family.

24. Cannabis has given me faith, hope, happiness, better health, and family. It helps tone down my pain and suffering, not to mention: it keeps me alive. Cannabis proved to be the only medicine that brought back feeling in the right side of my body and got me out of my wheelchair.

25. *Two Demulen Tablets:* In September 1995, three days before I lost feeling from the waist down, I went to a new doctor regarding my severe endometriosis pain and complications. It was really time for me to have surgery again for my endometriosis. The doctor did not want to give me surgery, instead she wanted to put me on birth control pills to control some of the symptoms. I explained to her that I was allergic to all forms of birth control pills. The doctor told me that just because I was allergic to a drug when I was a teenager and in my early twenties did not mean I was still allergic it. I took the pills on the advice of my doctor and I have been paying for that ever since. After taking just two Demulen pills, my health was taken away forever.

26. I became permanently disabled in September of 1995. My chronic pain condition became complex right from the start. I was at work when all of the sudden I felt a strange sensation go down my leg. In a matter of moments, my right leg was like Jell-O, bright red, and cold as ice. I could not walk on my right foot because my ankle was so weak it

would fall to the side. I was taken straight to the doctor. I was quite afraid because I could not feel my body from the waist down on the right side of my body. The next day I was dragging my leg around and I was unable to stand. Fear raced through my body and tears came from my eyes. The severe chronic pain I was experiencing was putting me in a world of pain and suffering, and making my life a living hell and my doctors' jobs extremely difficult when it comes to treating any one of my medical conditions.

27. The chronic pain I was experiencing caused me to become partially paralyzed on the right side of my body from the waist down and I was unable to use my right leg. My scoliosis and my endometriosis made things even worse for me. I did end up having surgery for my endometriosis and scar tissue six weeks after I took the birth control pills. It is extremely difficult for me to battle the physical manifestations of chronic pain and my nervous system is very fragile. I experience complications when my chronic pain conditions trigger each other, which makes all of my symptoms worsen.

28. *Suicide Attempt:* In August of 1997, shortly before I discovered the benefits of medical cannabis, my chronic pain levels were so high for such a prolonged period of time that, my body and soul racked with agony, I attempted suicide - as a desperate attempt to end the excruciating pain and my suffering. I was drowning in chronic pain for years, it was the only escape I could perceive from my torment. The lack of sleep effected my thinking process, until my brain was foggy and I could not see past the excruciating pain. I could not live another day with that kind of chronic pain, which nothing was helping. I was lost, I lost my faith, I lost my will, and I lost any hope I had left. I just could not handle the torture from the chronic pain anymore. I am blessed to be alive today, for I have been given a second chance at life. That night I made a promise with God that I would do God's work if He gave me back my legs, and I

promised to do my best not to complain about the chronic pain if God would helped me find something to help ease the pain. A couple of weeks later, a nurse who had been watching me suffer asked me if I had ever thought about using medical cannabis. I was offended because I was not in support of marijuana use. My doctors could not figure out what had been wrong with me for over two years. At the time I was in a wheelchair and partially paralyzed on the entire right side of my body. I wanted my suffering to end as soon as possible. I was becoming sicker and sicker from the prescription drugs the doctors were pumping into me, only to vomit the pills up prescription after prescription, until the cure was worst than the disease. I felt hopeless and I just wanted my suffering to end.

29. My numerous chronic pain conditions, as will all my medical conditions, present a complicated mosaic of problems with a confusing interplay between each other, exhibiting the potential of a vicious spiral that exacerbates all of my medical conditions. When I first started experiencing extreme levels of chronic pain I did better at hiding my pain and not letting the pain show on my face. Year by year it gets harder and harder to hide the chronic pain my body feels because pain takes over my body. Then there are the days I just can not get out of bed at all except to go to the bathroom. The chronic pain keeps me down until my body stops burning, throbbing, cramping, and my muscle spasms go away. I am tortured by chronic pain of all different kinds. It turns out to be a never ending circle of chronic pain. The chronic burning pain that goes on for days is the worst torture of all. It is hard to wake up every day and thank God for being alive, but I do thank him everyday for giving me back my legs so I can walk. So I will do whatever I have to do to ease this excruciating pain and to fight to stay alive. I have to do it for my children, I have to do it for myself, and I have to do this for my husband. I love them all so much I want to be with them until I die of old age, not because the Federal

Government raids me and puts me in jail where I could experience an even greater debilitating pain while I starve to death.

30. Dealing with high levels of chronic pain everyday for years becomes more and more difficult with each passing year. My body is deteriorating. I am a prisoner of my medical conditions and I am trapped in my body being made to live the rest of my life in severe chronic pain. Is not that enough? I will do whatever it takes to stay alive and as pain free as I can possibly be. When my nervous system becomes too overloaded with pain I experience muscle spasms and seizures.

31. *Muscle Spasms:* I regularly have muscle spasms that stem from my chronic pain. Spasms are sudden, involuntary muscular contractions, either of a single muscle or of a group of muscles. They are often very painful. Cannabis helps relax my muscles, making them more pliable, and it helps release my muscle spasms and cramps, allowing me to function more easily physically.

32. *Chronic Headaches:* I get very bad chronic headaches. They are extremely painful all over my head. The muscles on my head and face can go into spasms, causing excruciating chronic headaches making me find a dark quite place. Sometimes I get a bad headache just before I have a seizure. My headaches come from several of my medical conditions. Nearly every morning when I get up I have a headache. If my headache is not too bad I can get away with just vaporizing or smoking cannabis. When my headaches become overpowering, not even hours of being in a dark quite place helps. The only medication that helps my severe headaches is eating cannabis foods.

33. *Nausea:* I have chronic nausea that interferes with my quality of life. It makes eating and drinking difficult. My nausea can make my wasting conditions worsen when I am just not able to eat. When I eat I become

even more nauseated, which makes forcing myself to eat a real battle. When I first started suffering from nausea my doctors tried me on several anti-nausea medications and a medication that was supposed to help me eat. The medications not only made me more nauseated but they also would make me vomit violently. If the cannabis levels in my bloodstream drop even just a little bit I can become extremely ill. Preventing and controlling nausea helps ensure that I am able to eat food properly. It is hard to eat properly when you feel nauseated all the time and when even the smell, sight, or taste of food can trigger the nausea, making it all worse. Sometimes after eating my stomach will cramp up leaving me in wrenching pain. However, without the use of medical cannabis I would be unable to eat at all and I would not be able to eat enough food to help me hold onto my weight. Cannabis helps moderate my nausea and stomach cramps, and helps me eat and maintain my weight, without adverse side effects.

34. *Severe Temporomandibular Joint Dysfunction Syndrome (TMJ) and Bruxism:* Temporomandibular Joint Dysfunction Syndrome causes facial pain. The temporomandibular joint (TMJ) is a gliding joint in the jaw. The syndrome hinders my jaw from opening and closing, which makes talking and eating difficult. My jaw can become tightly locked closed. When that happens the only way I can open my mouth is to force it open by cracking my temporomandibular joint, which is very painful.

35. Bruxism is forceful grinding and clenching of the teeth usually during sleep. The pressure that is generated across the teeth can be an incredible amount of force. Problems occur as a result of these forces being applied over many years.

36. Temporomandibular Joint Dysfunction Syndrome and Bruxism cause muscle spasms and muscle cramps that create severe chronic pain in my face and jaw

muscles. Due to the Bruxism and TMJ, I am losing the bone and gum support in my mouth, and I am experiencing early periodontal problems. Because of these early periodontal problems, my dentist had to remove teeth in 1997, 1998, and 2001. I have two more teeth that are about to fall out. In effect my teeth have loosened because of the "rocking" back and forth. My bone, gums, and teeth ache and throb all the time and are very sore, and are sensitive to hot and cold. My mouth and jaw hurt all the time. Sometimes in the morning when I wake up I can't move my jaw and I can't chew. My whole face hurts and aches from the muscle spasms and the chronic pain. It becomes difficult to talk when my jaw locks up on me. Nothing helps the chronic pain go away completely. When the muscles in my jaw are overused they become sore and spasm. The spasms even make my neck hurt. I get chronic headaches from having TMJ and Bruxism. Cannabis helps release the muscle cramps and relax my jaw, face, and neck muscles in order for my temporomandibular join to crack so I can slightly open my mouth to eat something soft. Cannabis allows me to cope with the chronic pain and burning in my jaw and neck. Without cannabis being contentiously in my body I would not be able to relax the muscles around my mouth. Without the use of cannabis my TMJ and Bruxism would spin out of control, worsening my life-threatening weight loss, and rapidly causing malnutrition, starvation, and cachexia. For these reasons it is extremely dangerous for me to be without the use of cannabis.

37. *Life-Threatening Weight Loss, Malnutrition, Cachexia, and Starvation:* Since 1998, I have experienced great difficulty maintaining a healthy weight. My physicians, including my gastroenterologist, are unable to diagnose the root cause of my weight problems or to prescribe an effective course of treatment. One fact, however, is clear: I literally cannot eat without a sufficiently high level of cannabis in my system. Without cannabis, my weight can precipitously drop

as much as one pound per day. As a five-foot four-inch tall woman, I dropped from 106 pounds to a dangerously low weight of 93 pounds during the course of four weeks in which I could use cannabis only on two weekends pursuant to a family court order (which was subsequently overruled due to my rapid health failure) in a child custody fight with my children's father. I struggle with Life-Threatening Weight Loss and Wasting Syndrome, a medical condition generally diagnosed as Anorexia/Cachexia meaning loss of appetite and rapid weight loss. (I do *not* have a better-known condition called anorexia nervosa, a psychiatric disease in which patients are obsessed with being thin and have an unrealistic body-image.) My body-image is accurate; I see how thin I am and I work extremely hard everyday to eat enough. I simply cannot eat without the aid of cannabis. I eat between 2500 and 3000 calories per day, yet I have trouble getting my body to gain weight, for reasons that my physicians do not understand. The efficacy of cannabis is well established for stimulating appetite and promoting weight gain. The federal government claims cannabis has no accepted medical use and it claims cannabis is harmful to your health. Cannabis *is* safer than death. Without cannabis, I would run the very real risk of Malnutrition and Starvation. One result of Starvation is death. Dropping weight fast can become critical. Every time I have tried to cut my medical cannabis treatments back my weight dropped immediately. It is then difficult to bring my weight back up. This is how my doctors and I know that I require two and one-half ounces per week (equaling over eight pounds per year). Fighting to keep my weight up every single day is my biggest battle.

38. *Fibromyalgia Syndrome (FMS):* In 1997 I was first diagnosed with fibromyalgia. The symptoms slowly lessened, but then flared up again in early 2002. Fibromyalgia is a widespread musculoskeletal chronic pain and fatigue disorder that is often precipitated by physical trauma. Fibromyalgia means pain in the muscles, ligaments,

and tendons -- the soft tissue in the body. When my fibromyalgia acts up, my body feels extremely fatigued and every single muscle in my body screams out pain. When my body overloads with pain I will be flat on my back for days. The chronic pain keeps me down until my body stops burning, throbbing, cramping, and my muscle spasms go away. The best way I can describe it is "everything hurts". The chronic pain and the stiffness feel like a big diesel truck ran over my body, with the groups of muscles that are frequently used hurting most intensely. I also have neurological symptoms that are associated with FMS and some of my other medical conditions. As mentioned, I get extremely fatigued. The best way I can describe the fatigue is that it is like a "brain fatigue" in which I feel totally drained of energy. It feels as though my arms and legs are tied to concrete blocks, and I have difficulty concentrating. I am unable to focus or make big decisions on the days I am overwhelmed by this brain fog. I have problems falling asleep and staying asleep due to my high levels of pain. Many FMS patients, including myself, have problems with deep levels of sleep. "Stage four" sleep is constantly interrupted by bursts of awake-like brain activity. I spend nights with one foot in sleep and the other one out of it. Other symptoms I have from FMS are premenstrual syndrome, painful periods, chest pain, severe morning stiffness, and cognitive functioning problems. Sometimes I have a numbing feeling in my arms and legs, tingling sensations, muscle twitching, skin sensitivity, dizziness, and impaired coordination. I also have problems with losing my balance and stumbling.

39. Without cannabis my tendons and ligaments feel like an over stretched rubber band about ready to snap. Cannabis makes my muscles, tendons, and ligaments more pliable, allowing my body to move and go about my daily life. Cannabis allows me to cope with the severe chronic pain and chronic burning every movement brings to my

body. I noticed a big difference when eating cannabis food before going to physical therapy; it helps relax my muscles making it easier for my physical therapist to help relieve some of the pain and burning. Without cannabis being continuously in my body I would never be able to tolerate the burning and pain. My chronic pain levels become so high it makes even my skin hurt, making it is very difficult for me mentally to be in my body. Cannabis rescues me from the torture I have to endure from fibromyalgia. When I go to bed at night my whole body may throb like a strong heart beat, making it impossible to fall asleep. Cannabis helps my fibromyalgia symptoms and allows me to have a life with my family.

40. *Non-Epileptic Seizures:* I started having non-epileptic seizures in 1996, though my doctors did not diagnosis the seizures until 1999. When I have a seizure, I can lose awareness, have uncontrollable movements of my arms or legs or both, shake all over, and fall to the ground. Between seizures I experience problems related to memory, language, mood, sleep, and other brain functions. I am able to feel my seizures as they are come on. Sometimes, I experience an extremely bad headache and/or a strange feeling in my throat just before I have a seizure. When I force myself to go about my daily life while I am having functioning problems, or if I move around too fast, or even if I become frightened for any reason, I can have a seizure. Because I have a brain tumor my seizure specialist at Stanford Epilepsy Center tells me that my seizures could turn into epilepsy. My seizures are extremely painful. Sometimes, I have one seizure after another. They can trigger several of my other conditions and make all of my chronic pain conditions worse. When this happens I usually suffer for days having a combination of more seizures, and I will have body jerks, muscle spasms, and twitches, which cause excruciating pain that are unbearable for me to deal with.

41. Non-epileptic seizures can be caused by many different factors, including impaired blood flow to the brain, sleep disorders, severe chronic pain, psychological disturbances, and various other brain disturbances. It is not uncommon to see this type of seizure in individuals who have experienced a traumatic event or who are under various types of stress. In my case I have had a lifetime full of traumatic events, one after another. I have also had my share of severe chronic pain.

42. Cannabis helps slow down and minimize body jerks, muscle spasms, and twitches and helps to control the excruciating pain caused by my seizures. If I smoke or vaporize cannabis at the first onset of seizure symptoms, the cannabis can prevent the seizure. If I am unable to use cannabis in time to prevent the seizure, I need to medicate with cannabis when I am alert enough to smoke or vaporize to prevent another seizure.

43. *Inoperable Brain Tumor:* In 1999 an MRI showed I have a brain tumor. I have a circumscribed one centimeter densely enhancing tumor in the left petrous apex that mildly deforms the ventromedial aspect of the left temporal lobe. It is a Meningioma or a Schwannoma brain tumor. My doctors say the tumor is too deep for them to do surgery to remove it.

44. My doctor wants me to continue medicating with cannabis in the hope that, among its other benefits, it will prevent my brain tumor from growing.

45. *Uterine Fibroid Tumor:* In 2001 I was diagnosed with having a uterine fibroid tumor. Uterine Fibroids are benign tumors of muscle and connective tissue that develop within or are attached to the uterine wall. They slowly enlarge, frequently intruding into the cavity of the uterus or growing out beyond the normal boundary of the uterus. Even one small fibroid can cause many problems, sudden severe pain, and heavy menstrual bleeding. I have had several

problems with my tumor in this past year. I suffer from sensations of fullness and pressure in my lower abdomen, severe pelvic cramping, abdominal fullness, and an increase in urinary frequency. The biggest problem is extremely heavy menstrual bleeding. I bleed so fast that I suffer from light-headedness and become dizzy and nauseous to the point of almost passing out. I have always had nausea but it is now worse than before. The heavy bleeding and the severely painful menstrual periods tend to keep me down flat on my back for two or three days per month. Cannabis helps minimize monthly PMS symptoms. Cannabis helps relax my pelvic muscles, helps minimize pelvic pain, and helps release my muscle spasms and cramps, allowing me to function more easily physically.

46. *Recent Spinal Injury:* The effects of my scoliosis worsened several months ago after a very large man fell on my head, injuring my neck and back. The injury caused excruciating pain at the site of the injury, excruciating burning pain in my vertebrae, nerve problems going down both arms, and difficulties with my thumbs. The injury also caused some of my other pain conditions (TMJ, Rotator Cuff Syndrome, Headaches) to worsen. After a few months, the resulting pain caused me to experience multiple episodes of seizures and muscle spasms, which were also painful in their own right, further exacerbating my other chronic pain conditions and their related symptoms, and creating new and painful secondary injuries. Perhaps most critically, the injury caused my Fibromyalgia Syndrome worsen (see paragraph 38).

47. *My Medical Cannabis Use:* Before I became a medical cannabis patient I was against recreational marijuana use. In late 1997, my doctor felt cannabis would be an effective medication to treat my many complicated and complex medical conditions, and gave me my first recommendation to use medical cannabis. I eventually became a member of the Oakland Cannabis Buyers'

Cooperative (OCBC) in early 1998, before the federal government filed suit against it. The OCBC was trying to provide me with medical grade cannabis. I was one of 14 "medical necessity" patients that the Oakland Cannabis Buyers' Cooperative was fighting for in the United States Supreme Court in 2001. The federal government, however, prevented the OCBC from giving me safe access to the one medication (medical cannabis) that keeps me alive. At that point I was forced to obtain my medication on the street. I was robbed, ripped off, and taken advantage of by the people selling the marijuana to me or to a friend on the street. Black market marijuana *is not* medical grade cannabis. One really does not know what is in that marijuana. It may contain mold, fungus, pesticides, other drugs, rat droppings, or god knows what. One does not know how it was grown or processed. It is just not safe.

48. To be safer and to save money, I tried to grow my own cannabis about five years ago. Even though I am good at growing most house plants, I found that I could not grow my own cannabis. Indoor cannabis *does not* grow like a weed, as some people think. The cannabis plants needed special care, and they needed more than I was able to give physically. I kept having insect problems and I did not have enough room or ventilation in my house. I could not grow enough medicine for my medical needs. Thus, as a single mother, to buy cannabis, I had to make choices such as which bills to pay that month, and whether I would have enough food to eat after I fed my children.

49. I am now blessed to have two wonderful caregivers who grow all of my medicine and are willing to take a huge risk with their own liberty to help keep me alive. That is true compassion. I am sure we would all be facing mandatory sentences just because we are growing a plant that happens to keep me alive and allows me to be here for my children. I would not be alive if it were not for these two caregivers. My caregivers both work very hard to help me

fight my diseases. My caregivers grow my medicine specifically for me. They do not charge me, nor do we trade anything. They grow my medicine and give it to me free of charge. They both grow different strains of cannabis for me to treat my medical conditions. One strain of medical cannabis helps my chronic pain, one helps my seizures, one helps me eat and hold onto my weight, and another may helps control my nausea. All of these different strains of medical cannabis are very beneficial and essential to my survival. Not all strains of cannabis work for me. Because the different strains have different growth cycles, one caregiver *could not* grow all of the medical cannabis I require to keep my weight up and my pain levels down. Moreover, I can not risk having all of my medicine in one place because I can not afford to lose my whole garden if there is a pest problem or if it were raided by federal agents. The caregivers who grow my medicine are my co-plaintiffs, known as in this litigation as JOHN DOE NUMBER ONE and JOHN DOE NUMBER TWO.

50. In the cultivation of my medical cannabis, JOHN DOE NUMBER ONE and JOHN DOE NUMBER TWO, of Oakland, California, use only soil, water, and nutrients originating from within the borders of the State of California. JOHN DOE NUMBER ONE and JOHN DOE NUMBER TWO also use only growing equipment, supplies, and lumber manufactured within the borders of the State of California. JOHN DOE NUMBER ONE and JOHN DOE NUMBER TWO cultivate for me medical-grade cannabis free of mold, fungus, pesticide residue, and other contaminates in the particular strains that I have found to be most effective in treating my specific medical conditions.

51. Both of my caregivers not only grow my medical-grade cannabis but they also process the cannabis into hashish or keif. Additionally, I process the cannabis into cannabis oil for cooking, I make cannabis therapeutic

massage oil, I make cannabis therapeutic skin balm, and I make cannabis foods.

52. I provide the following information to my caregivers to try to keep them safe and protect my medicine in case law enforcement agents raid the garden areas:

A. Copies of my doctors' recommendations for the use of medical cannabis,
B. A copy of my Oakland Cannabis Buyers' Cooperative I.D. Card that states I am a "medical necessity" patient and confirms that my recommendation is valid,
C. Copies of some of my medical records, and
D. A signed caregiver statement that says my caregivers provide my medical cannabis to me.

In total, my caregivers grow over eight pounds per year of medical-grade cannabis for me.

53. *Amount of Cannabis I Use:* I use over two and one-half ounces of processed medical cannabis per week, or over eight pounds of cannabis per year. Cannabis does not get me "high." I cook and bake my own cannabis foods. I use my homemade cannabis oils to make massage oil and balm that I use to rub over my body, which helps my muscle spasms and cramps. I even used it on my stitches after surgery. It works like a miracle on rashes and hives. The worst side effect is the fear that at any moment the DEA could kick my door in and cause my and my family irreparable harm. My children, my husband, and myself are all aware of the risks we have been taking in order to keep me alive. We are willing to risk it all by telling about our family, and telling the Court all about my medical use of cannabis. Is the only effective way for me safely to treat all of my many medical conditions without becoming sicker. With cannabis I do not suffer from the side effects I experience with synthetic prescription medications. I am not

a medical cannabis patient because I choose to be one -- I am a medical cannabis patient because it is a necessity to keep me from dying. Taking a pill would be much easier and would take less time, but I simply do not have that option the way most others patient do. I have no other medical or legal alternative to sustain my life. Cannabis saved my life and gave my children their mother back. I would rather use cannabis to end the suffering from my conditions, and be alive, than to suffer endlessly knowing that there *is* something that could help treat my serious medical conditions. Cannabis is the only medication that keeps me alive and makes my medical conditions more manageable and my life livable.

54. *How I Use Medical Cannabis:* I smoke or vaporize cannabis every two waking hours, and have every day since late 1997. Upon starting to use cannabis in 1997 I immediately noticed a huge difference in my medical conditions. I noticed an even bigger difference in 1998 when I started to ingest medical cannabis by eating cannabis brownies, cakes, candy, and milk. Using the smoked and vaporized cannabis and the ingested cannabis at the same time made the biggest improvement in my medical conditions. One of my problems is I am unable to sleep due to high levels of pain. If I am lucky enough to fall asleep, I may wake up in the middle of the night in tears. When I eat cannabis before bedtime it helps me sleep better. Rest is important for my healing process. Cannabis massage oil and balm used topically on my muscles and joints makes a big difference. Using all of these methods together seems to make the biggest impact on my health, and helps me to manage and cope better on a daily basis. It has made all the difference in the world. My doctors noticed, my children noticed, my friends noticed.

55. It is a miracle I am now walking, it is a miracle I am even alive. I still have functioning problems and extremely high levels of pain even with the cannabis,

however cannabis controls the pain enough so I can walk again, and it keeps me from wasting away and starving to death. I am not willing to give up my life or go back into a wheelchair without a fight. Cannabis really does help my conditions. It keeps me alive and helps minimize my suffering. My cannabis use and doctors' recommendations are all documented in my medical records.

56. I know I am taking a huge risk by talking publicly about my medical cannabis use. I am in no way going to stop using cannabis. I am fighting to stay alive. I want to live! I am extremely afraid of being raided by federal agents. The fear I experience is having a negative effect on my medical conditions. If I am raided by federal agents or incarcerated and kept from using my medicine, I would be gravely ill in a short amount of time. My children need me to take care of them and help them grow up. I have never been arrested nor am I a threat to anyone. I am just a mother who is fighting to stay alive. I feel the United States Attorney General and the DEA Administrator Asa Hutchinson are waging a civil war against the sick, disabled, and dying Americans of our country. I am filing this lawsuit to fight for my constitutional right to life.

57. *My Media Attention:* Because of all the media coverage I have received, I am at greater risk of being raided by the federal government. After cannabis had freed me from my wheelchair I became more active in helping California medical cannabis patients. After the Supreme Court's 2001 decision in the Oakland Cannabis Buyers' Cooperative case, I received significant national and international media coverage. My photos and quotes were used in many newspapers across the United States, including the *New York Times* and *USA Today*. I spoke on national television saying I could not follow any federal law that purported to prevent me from using cannabis. Since then I have spoken at numerous events and conferences educating the public about the use of medical cannabis. I have taught

classes on medical cannabis at high schools and colleges, and police academies.

58. *My Community Education and Community Service Activities:* I do my best to become involved in my community when my body allows me to participate. I am on the Oakland City Council's Medical Cannabis Task Force. I work with the Alameda County Public Health Department and the Alameda County Department of Children and Family Services regarding medical cannabis issues. I have spoken before city councils. I do not want other patients to suffer as I have to. We need to be taken off the battlefield of the "Drug War" right away. My life depends upon it. I feel I have been left with no choice: I have no alternative but to speak out. However, I fear that makes me an easy target based on numerous raids by federal agents against patients and growers. Outspoken patients have recently been targeted and raided by federal agents.

59. *How My Medical Conditions and My Use of Medical Cannabis Affected My Children:* My children have had a very difficult time adjusting to my many complex medical conditions. They know more than anyone how medical cannabis brought their mommy back to them. Before 1995, I was the neighborhood mother, who played basketball, roller bladed, played frequently with the children, managed my son's little league baseball team, and helped at the school. We would have all of the neighborhood children over to bake cookies, and we would do children's hobbies and crafts. We did all kinds of wonderful and fun things together. Our lives have never been the same since I became disabled, and never will be normal again. My medical conditions have affected my children emotionally. When I became disabled in September 1995, my daughter had just started kindergarten. She was so little that she just did not adjust well to my medical conditions. At that young age my daughter would actually hit me when I was in my wheelchair. She was so angry because her mommy was gone, replaced by

my diseases. My daughter was trying to beat the disease out of my body. My daughter was too little to understand what was happening to her mommy. She would lay on her bed and cry with sadness. I was unable to hold my daughter in my arms as I used to because the burning pain in my body would become worse if someone touched my skin, and my body was very debilitated. I really missed holding both of my children. I love them so much, I would do anything for them and I would do anything to keep them safe from harm. As the years passed my body continued to deteriorate, and I became weaker and weaker. The weaker I became from my diseases, the harder it was for my children.

60. One night I hard my daughter crying in bed. I went to her side and asked her why she was crying. She told me she was crying because I was disabled and sick. She wanted me to get out of my wheelchair. She wanted her mommy back. She asked me why, why can't I get better, why does her mommy have to be in a wheelchair. She cried for a long time. She often cried at night about my medical conditions. She missed me. It broke my heart. I told her to keep praying and maybe God would answer her prayers. I thought prayer was the best thing. She told me she had been praying and God did not hear her prayer. I told her to keep praying and ask Him to answer her and maybe her prayers would come true.

61. I do my very best to be there to support both of my children. My children and I have a great open communication. They know they can talk to me about anything. I have to protect my children and do what is in their best interests.

62. Both of my children know that medical cannabis *is* legal under California State law. I asked my children if they wanted me to stop using my medicine because of the federal government. They both told me, "No Way." The expression on their little faces said it all. My children know

that I am alive today because of medical cannabis. I do not want the DEA to raid my home and traumatize me or my family.

63. Medical cannabis has only medical benefits for me, I have not had one single negative experience from using cannabis medically. The most scary side effect is knowing that at any moment federal agents could kick my door in and hold me and my family prisoner. My children and my husband are all aware of the risks they have been taking in order to keep me alive. We are now willing to risk even more by disclosing my medical use of medical cannabis under oath herein.

64. *Conclusion:* For years I felt as if I was suffering in Hell. What I had to endure was unbelievable and indescribable torture. Somehow, I found a miracle sent down from heaven by an angel that brought me up from the pits of Hell, and saved my life. I was given medical cannabis! My life was saved by this new miraculous medicine and my life was forever changed. Healing had begun, and healing was my gift. I have seen the changes in my body, my doctors have seen the changes in my body, and my family and friends have seen my miracle. I am sorry, I can not stop using medical cannabis or I will die. I am not giving up the miracle I have been given to save my very life. I will not go back to Hell for anyone or anything. I implore the federal government not to take my life from me. I want to live and grow in peace.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct, and that this declaration was executed on this 25th day of October, 2002, in Oakland, California.

/s/ ANGEL McCLARY RAICH
ANGEL McCLARY RAICH